

**BOARD FOR
THE CONDEMNATION OF INSANITARY BUILDINGS**

NOTICE OF PUBLIC INTEREST

<u>BUILDINGS CONDEMNED</u>	<u>LOT</u>	<u>SQUARE</u>	<u>WD</u>
<u>Northwest</u>			
1106 Allison Street	76	2917	4
7100 Chestnut Street	808	3184	4
1205 Clifton Street	40	2865	1
1323 Corcoran Street	21	240	2
1405R Crittenden Street-Rear	29	2706	4
1502 Decatur Street	32	2707	4
412 Delafield Place	175	3251	4
1123 Fairmont Street-Rear	46	2859	1
617 Farragut Street	106	3212	4
1304 Farragut Street	41	2807	4
519 Florida Avenue	25	3093	1
521 Florida Avenue	26	3093	1
3200 Georgia Avenue	909	2892	1
3203 Georgia Avenue	809	3042	1
3912 Georgia Avenue	104	2892	4
3912 Georgia Avenue-Rear	104	2892	4
3801 Georgia Avenue	55	3028	4
7700 Georgia Avenue	21	2957	4
1342 Ingraham Street	75	2804	4
4820 Iowa Avenue	30	2709	4
425 Irving Street-Rear	64	3049	4
535 Irving Street	31	3048	1
535 Irving Street-Rear	31	3048	1
470 K Street	44	516	2
1331 Kenyon Street	47	2843	1
414 Longfellow Street-Rear	19	3260	4
503 Longfellow Street	50	3206	4
718 Marietta Place	43	3155	4
4001 Marlboro Place	48	3313	4
1021 Monroe Street	74	2832	1
1824 Monroe Street	813	2614	1
1342 Montague Street	46	2796	4
1342 Montague Street-Rear	46	2796	4

<u>BUILDINGS CONDEMNED</u>	<u>LOT</u>	<u>SQUARE</u>	<u>WD</u>
<u>Northwest (cont'd)</u>			
3500 Nebraska Avenue	24	1599	3
1424 North Capitol Street	10	616	5
1424 North Capitol Street-Rear	10	616	5
4922 North Capitol Street	67	3401	4
505 O Street	36	479	5
507 O Street	37	479	5
509 O Street	2001/2002	479	5
820 Otis Place	119	2895	1
88-88 1/2 P Street	825	616	2
219 P Street	113	552	5
3245 Patterson Street-Rear	25	2021	4
1000 Park Road	39	2841	1
1424 Parkwood Place	46	2688	1
1001 Quebec Place	63	2902	4
50 R Street-Rear	31	3101	5
403 R Street	801	0507	5
1000 Rhode Island Avenue	19	337	2
1427 Rhode Island Avenue	27	210	2
1429 Rhode Island Avenue	28	210	2
735 Rock Creek Church Road-Rear	58	3130	4
1355 Shepherd Street	45	2823	4
1421 T Street-Rear	845	205	1
533 U Street	38	3079	2
901-01 U Street	88	360	1
903 U Street	89	360	1
131 Varnum Street	803	3321	4
1505 Varnum Street	25	2698	4
911 W Street	067	0357	1
1305 Wallach Place	169	237	1
223 Webster Street	820	3319	4
225 Webster Street	10	3319	4
1227 1 st Street	9	618	5
1202 3 rd Street	837	523	2
5311 3 rd Street-Rear	6	3328	4
5807 3 rd Place-Rear	81	3291	4
1222 4 th Street	903	513	2
1416 5 th Street	26	479	2
4109 5 th Street	47	3241	4
1104 6 th Street	859	449	2
1539 7 th Street	179	445	2

<u>BUILDINGS CONDEMNED</u>	<u>LOT</u>	<u>SQUARE</u>	<u>WD</u>
<u>Northwest (cont'd)</u>			
1527 8 th Street	15	421	2
1301 9 th Street	801	399	2
1303 9 th Street	62	399	2
1305 9 th Street	63	399	2
1307 9 th Street	803	399	2
1309 9 th Street	804	399	2
4428 9 th Street-Rear (Addition)	34	3020	4
1513-1515 11 th Street	815	337	2
1725 11 th Street	805	0335	2
2219 13 th Street	86	271	1
3637 13 th Street	145	2829	1
5008 13 th Street	53	2806	4
5008 13 th Street-Rear	53	2806	4
3564 14 th Street	24	2688	1
3614 14 th Street	26	2689	1
5310 14 th Street	13	2716	4
3222 19 th Street-Rear	817	2604	1
1617 21 st Street	136	93	2

<u>BUILDINGS CONDEMNED</u>	<u>LOT</u>	<u>SQUARE</u>	<u>WD</u>
<u>Northeast</u>			
3701 Benning Road	807	5044	5
2301 Bladensburg Road	41	4359	5
3042 Clinton Street	826	4319	5
1820 Corcoran Street	18	4049	5
600 Division Avenue	13	5196	7
1717 E Street	143	4546	6
1721 E Street	144	4546	6
26 Florida Avenue	71	3516	5
629 Florida Avenue	176	855	6
5900 Foote Street,	805	5256	7
4116 Gault Place	67	5077	7
303 K Street	804	775	6
1118 Montello Avenue	71	4070	5
1916 Newton Street	118	4202	5

<u>BUILDINGS CONDEMNED</u>	<u>LOT</u>	<u>SQUARE</u>	<u>WD</u>
<u>Northeast (cont'd)</u>			
2422 Otis Street-Rear	48	4298	1
52 Q Street	105	3520	5
58 Q Street	102	3250	5
4608 Quarles Street-Rear	24	5167	7
1515 Rhode Island Avenue-Rear	43	4131	5
115 Riggs Road	85	3701	5
4310 Sheriff Road	819	5097	7
4326 Sheriff Road	831	5097	7
1741 Trinidad Avenue	26	4082	5
142 Webster Street	42	3668	4
1407 West Virginia Avenue	155	4059	5
2413 2 nd Street	38	3556	5
1020 3 rd Street	34	749	6
1022 3 rd Street	33	749	6
2407 3 rd Street	28	3555	5
621 4 th Street	93	810	6
819 7 th Street	22	889	6
821 7 th Street	39	889	6
251 8 th Street	64	917	6
608 8 th Street	45	891	6
4100 13 th Street	24	Par 146	5
3122 16 th Street	39	4014	5
4413 16 th Street	5	4617	5
1234 18 th Place	811	4445	5
1236 18 th Place	811	4445	5
3712 24 th Street	42	4242	5
913 43 rd Place	47	5096	7
1044 44 th Street	70	5125	7
919 47 th Street	119	5151	7
1044 48 th Place	35	5153	7
945 52 nd Street	803	5199	7
234 56 th Street	144	5250	7
201 63 rd Street	31	5269	7
4427 A Street	107	5350	7
3608 Alabama Avenue	823	5668	7
27 Atlantic Street	54	6170	8
4926 Call Place	33	5336	7
4030 Call Place	32	5336	7

<u>BUILDINGS CONDEMNED</u>	<u>LOT</u>	<u>SQUARE</u>	<u>WD</u>
<u>Southeast</u>			
5000 Call Place	35	5323	7
420 Chesapeake Street-Rear	808	6165	8
422 Chesapeake Street-Rear	809	6165	8
1720 D Street	87	1100	6
1229 E Street	816	1019	6
3326 Ely Place	807	5444	6
1254 Half Street	99	0701	6
1260 Half Street	144	0701	6
1448 Minnesota Avenue	837	5605	8
430 Morris Road	2	5810	8
2329 Q Street	56	5587	6
1008 South Carolina Avenue	23	970	6
2914 Stanton Road	857	5877	8
1219 Sumner Road	979	5865	8
1242 W Street	99	5782	8
1518 W Street	814	5779	8
4001 4 th Street	39	6167	8
1012 7 th Street	11	906	6
1014 7 th Street	10	906	6
102 9 th Street	801	0943	6
2105 13 th Street	681	5782	6
333 16 th Street	82	1074	6
2201 16 th Street	26	5795	8
20 53 rd Place	884	5284	7

<u>BUILDINGS CONDEMNED</u>	<u>LOT</u>	<u>SQUARE</u>	<u>WD</u>
<u>Southwest</u>			
71 Forrester Street	67	6240	8

**BOARD OF ELECTIONS AND ETHICS
CERTIFICATION OF ANC/SMD VACANCIES**

The District of Columbia Board of Elections and Ethics hereby gives notice that there are vacancies in seventeen (17) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code §1-309.06(d)(2);2001 Ed.

VACANT: 4B07

Petition Circulation Period: Monday, February 9, 2004 thru Monday, March 1, 2004
Petition Challenge Period: Thursday, March 4, 2004 thru Wednesday, March 10, 2004

VACANT: 3B01, 5A01

Petition Circulation Period: Tuesday, February 10, 2004 thru Monday, March 1, 2004
Petition Challenge Period: Thursday, March 4, 2004 thru Wednesday, March 10, 2004

**VACANT: 2A06
3D07, 3D08, 3E05
4A05
5C10, 5C11
6B11
8B03, 8C05, 8C06, 8E01**

Petition Circulation Period: Wednesday, February 11, 2004 thru Tuesday, March 2, 2004
Petition Challenge Period: Friday, March 5, 2004 thru Thursday, March 11, 2004

VACANT: 2E02, 3B04

Petition Circulation Period: Monday, March 1, 2004 thru Monday, March 22, 2004
Petition Challenge Period: Thursday, March 25, 2004 thru Wednesday, March 29, 2004

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

**D.C. Board of Elections and Ethics
441 - 4th Street, NW, Room 250N**

For more information, the public may call 727-2525.

BOARD OF ELECTIONS AND ETHICS

NOTICE OF PUBLICATION

The District of Columbia Board of Elections and Ethics at a special meeting on Wednesday, February 18, 2004 formulated the short title, summary statement, and legislative text of the "D.C. Smokefree Workplaces Initiative of 2004." Pursuant to D.C. Official Code § 1-1001.16(d); 2001 ed., the Board hereby publishes the above formulations as follows:

INITIATIVE MEASURE NO. 66

SHORT TITLE

"D.C. SMOKEFREE WORKPLACES INITIATIVE OF 2004"

SUMMARY STATEMENT

This initiative, if passed, would create smokefree work environments in all enclosed public and private places of employment in the District of Columbia;

This initiative would:

- prohibit smoking in indoor workplaces and indoor public places;
- require no-smoking signs to be posted and ashtrays to be removed in all smokefree areas; and
- establish fines for violations.

The smokefree requirements of this initiative would not apply to private residences except those used as workplaces that regularly provide day care, educational services or health services.

LEGISLATIVE TEXT

To amend the District of Columbia Smoking Restriction Act of 1979, Title 7, Chapter 17

of the D.C. Official Code to create smokefree work environments in all enclosed public and private workplaces in the District of Columbia, and to establish penalties for the violation of smokefree workplace regulations.

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA, That this act may be cited as the Smokefree Workplace Initiative Act of 2004.

Sec. 2. The District of Columbia Smoking Restriction Act of 1979, effective September 28, 1979 D.C. Law 3-22, as amended by the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, D.C. Law 6-42, as amended by the District of Columbia Smoking Restriction Act of 1979 Amendments Act of 1987, effective March 29, 1988, D.C. Law 7-100, as amended by the Smoking Regulation Amendment Act of 1990, effective May 2, 1991, D.C. Law 8-262, as amended by the Smoking Regulation Amendment Act of 1992, effective March 17, 1993, D.C. Law 9-223, and as amended by the Prohibition of Employment Discrimination on the Basis of Tobacco Use Amendment Act of 1992, effective March 17, 1993, D.C. Law 9-240, (Official D.C. Code Title 7, Chapter 17, § 7-1701 et seq.), is amended as follows:

(a) Section 2 of The District of Columbia Smoking Restriction Act of 1979, effective September 28, 1979, D.C. Law 3-22, as amended by Section 2(a) of the District of Columbia Smoking Restriction Act of 1979 Amendments Act of 1987, effective March 29, 1988, D.C. Law 7-100, (Official D.C. Code §7-1701), is amended to read as follows:

“(a) The Council of the District of Columbia finds that the inhalation of secondhand smoke resulting from the smoking of tobacco inside facilities in which the public congregates is a clear danger to health and a cause of discomfort to persons in such facilities.

“(b) The Council of the District of Columbia further finds that numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer.

“(c) The Council further finds that secondhand smoke is a known carcinogen.

“(d) The Council further finds that the U.S. Surgeon General has determined that

the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke.

“(e) A significant amount of exposure to secondhand smoke occurs in the workplace. A study published in *Tobacco Control* found that employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.

“(f) A study published in *Business and Health* found that smoke-filled workplaces result in higher workplace absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke.

“(g) The purpose of this act is to protect the public health and welfare by prohibiting smoking in public places and places of employment.”

(b) Section 3 of The District of Columbia Smoking Restriction Act of 1979, effective September 28, 1979, D.C. Law 3-22, as amended by Section 2(b) of the District of Columbia Smoking Restriction Act of 1979 Amendments Act of 1987, effective March 29, 1988, D.C. Law 7-100, (Official D.C. Code §7-1702,) is amended to read as follows:

“For the purposes of this act:

“(1) “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for an entity.

“(2) “Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or an entity that employs the services of one or more individual persons.

“(3) “Indoor” means an area that is neither open nor partially enclosed, except normal means of access and egress through doors or passageways.

“(4) “Mayor” means the Mayor of the District of Columbia or the Mayor’s designated agent.

“(5) “Person” means any individual, firm, partnership, association, corporation, company, or organization of any kind, including a government agency, to which the health and safety laws of the District of Columbia may be applied.

“(6) “Place of Employment” means an area under the control of a public or private employer that employees may frequent during the course of employment, including, but not limited to, offices, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, taxis and company-owned vehicles used for business purposes. A private residence is not a place of employment unless it is used as a licensed child care, adult day care, educational or health care facility.

“(7) “Public Place” means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, food service establishments, health care facilities, laundromats, nightclubs, pool halls, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, taverns, theaters, and waiting rooms. A private residence is not a public place unless it is used as a licensed child care, adult day care, educational or health care facility.

“(8) “Smoking” means the act of puffing, having in one’s possession, holding or carrying a lighted or smoldering cigar, cigarette, pipe, or smoking equipment of any kind or lighting a cigar, cigarette, pipe or smoking equipment of any kind.

“(9) “Tobacco store” means a retail store devoted primarily to the sale of any tobacco product, including but not limited to cigarettes, cigars, pipe tobacco and chewing tobacco, and accessories and in which the sale of other products is merely incidental. The sale of such other products shall be considered incidental if such sales generate less than ten percent(10%) of the total annual gross sales.”

(c) Section 4 of The District of Columbia Smoking Restriction Act of 1979, effective September 28, 1979, D.C. Law 3-22, as amended by Section 2(c) of the District of Columbia Smoking Restriction Act of 1979 Amendments Act of 1987, effective March 29, 1988, D.C.

Law 7-100, and as amended by Section 2(a) of the Smoking Regulation Amendment Act of 1990, effective May 2, 1991, D.C. Law 8-262, (Official D.C. Code §7-1703), is amended to read as follows:

a. "Smoking shall be prohibited in the following:

"(1) Any indoor public place;

"(2) Any indoor place of employment;

"(3) Any elevator, except in a single family home.

(d) Sections 4a and 4b of The District of Columbia Smoking Restriction Act of 1979, effective September 28, 1979, D.C. Law 3-22, as amended by Section 2(d) of the District of Columbia Smoking Restriction Act of 1979 Amendments Act of 1987, effective March 29, 1988, D.C. Law 7-100, as amended by Section 2(b) of the Smoking Regulation Amendment Act of 1990, effective May 2, 1991, D.C. Law 8-262, and as amended by Section 2 of the Prohibition of Employment Discrimination on the basis of tobacco Use Amendment Act of 1992, effective March 17, 1993, (D.C. Law 9-240; (Official D.C. Code § 7-1703.01), are repealed. Section 4b of D.C. Law 8-262; (Official D.C. Code § 7-1703.02), is repealed. Section 4c of D.C. Law 9-240; (Official D.C. Code § 7-1703.03), is repealed.

(e) Section 5 of The District of Columbia Smoking Restriction Act of 1979, effective September 28, 1979, D.C. Law 3-22, as amended by Section 2(e) of the District of Columbia Smoking Restriction Act of 1979 Amendments Act of 1987, effective March 29, 1988, D.C. Law 7-100, as amended by section 2(c) of the Smoking Regulation Amendment Act of 1990, effective May 2, 1991, D.C. Law 8-262 and as amended by Section 2 of the Smoking Regulation Amendment Act of 1992, effective March 17, 1993, D.C. Law 9-223, (Official D.C. Code § 7-1704) is amended to read as follows:

"(a) In any place, elevator, or vehicle in which smoking is prohibited, the owner, manager, or person in charge of the place, elevator, or vehicle shall post or cause to be posted signs that read, "No Smoking Under Penalty of Law". Signs posted shall clearly state the maximum fine for a violation of this act. Signs shall be visible to the public at the entrance to the area and on the interior of the area in sufficient number and in a manner that gives notice to the public of the applicable law. Signs shall also include a number to call to report violations of this

act.

“(b) Where smoking is prohibited pursuant to this act all signs posted shall include the internationally recognized no smoking symbol.

“(c) It shall be unlawful for any person to obscure, remove, deface, mutilate, or destroy any sign posted in accordance with the provisions of this act.

“(d) All ashtrays and other smoking paraphernalia shall be removed by the owner, operator, manager, or other person having control of the area from any area where smoking is prohibited under this act”.

(f) Section 6 of The District of Columbia Smoking Restriction Act of 1979, effective September 28, 1979, D.C. Law 3-22, as amended by Section 2(f) of the District of Columbia Smoking Restriction Act of 1979 Amendments Act of 1987, effective March 29, 1988, D.C. Law 7-100,(Official D.C. Code § 7-1705), is amended to read as follows:

“(a) The owner, lessee, manager, operator or other person in charge of a facility or vehicle where smoking is prohibited pursuant to this act shall:

“(1) Post and maintain the appropriate "No Smoking" signs;

“(2) Ask persons observed smoking in violation of this act to refrain from smoking; and

“(3) Not provide service to persons in violation of this act.

“(b) Whenever the owner, lessee, manager or operator of a facility covered by this act requires a license issued by the District of Columbia government in order to operate the facility, the owner, lessee, manager or operator shall comply with this subchapter as a requirement for receiving or renewing the license. Where an on-site inspection is required prior to issuance or renewal of a license, the inspector should certify that the appropriate signs have been posted. In those cases where an on-site inspection is not needed, a signed statement by the applicant that he has complied with this subchapter shall constitute sufficient evidence of compliance as required in this subsection. Violation of this act shall be grounds for license suspension or revocation.

“(c) The Mayor is authorized to promulgate any regulations needed to carry out the provisions of this act.

“(d) An aggrieved person or class of persons may bring an action in the Superior Court of the District of Columbia for injunctive relief to prevent any owner, lessee, manager, operator or person otherwise in charge of a facility or vehicle where smoking is prohibited pursuant to this act from violating, or continuing to violate, any provision of this act. For the purposes of this subsection, an "aggrieved person" shall be defined as any person subjected to tobacco smoke due to failure to comply with this act”

(g) Section 7 of The District of Columbia Smoking Restriction Act of 1979, effective September 28, 1979, D.C. Law 3-22, as amended by Section 411 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, D.C. Law 6-42 as amended by Section 2(g) of the District of Columbia Smoking Restriction Act of 1979 Amendments Act of 1987, effective March 29, 1988, D.C. Law 7-100, and as amended by section 2(d) of the Smoking Regulation Amendment Act of 1990, effective May 2, 1991, D.C. Law 8-262, (Official D.C. Code § 7-1706), is amended to read as follows:

“(a) Any person who violates any provision of this act, other than Section 8 of D.C. Law 3-22, by:

“(1) Smoking in a posted "No Smoking" area or defacing or removing a "No Smoking" sign, or failing to post warning signs as set forth in section 5(a) shall, upon conviction, be punishable by a fine of not less than \$100 nor more than \$200 for a 1st offense; and not less than \$200 nor more than \$1,000 for each 2nd or subsequent offense; or

“(2) Obscuring, removing, defacing, mutilating or destroying any sign posted in accordance with the provisions of this subchapter act shall, upon conviction, be punishable by a fine of not more than \$500; or

“(3) Failing to post or cause to be posted or to maintain "No Smoking" signs and by failing to warn a smoker observed to be smoking in violation of this subchapter act to stop smoking, as required by this subchapter act, shall, upon conviction, be punishable by a fine of not more than \$500. Each and every day that the violation continues shall constitute a separate offense, and the penalties provided for in this paragraph shall be applicable to each separate offense; provided, that such penalties shall not be levied against any employee or officer of any branch, agency or instrumentality of the District of Columbia government.

“(4) Failing to remove ash trays from public places or places of employment shall, upon conviction, be punishable by a fine of not more than \$500. Each and every day that the violation continues shall constitute a separate offense, and the penalties provided for in this paragraph shall be applicable to each separate offense; provided, that such penalties shall not be levied against any employee or officer of any branch, agency or instrumentality of the District of Columbia government.

“(b) The Mayor is authorized to establish procedures for the issuance of a citation to any person who violates this act requiring the person to post collateral in accordance with Official D.C.Code § 16-704 to assure the person's appearance in the Superior Court of the District of Columbia to answer the citation, and such collateral may be forfeited in lieu of an appearance as the Court may direct.

“(c) Issuances of citations pursuant to subsection (b) of this section shall not constitute arrests nor shall forfeitures of collateral pursuant to said subsection constitute convictions. Records which may be maintained in connection with the implementation of this section shall not constitute records of arrest under section 302 of Title III of the District of Columbia Law Enforcement Act of 1953, approved June 29, 1953 (67 Stat. 100; D.C. Official Code § 5-113.02), relating to arrest records, or paragraph (4) of section 386 of the Revised Statutes (Official D.C.Code §113.01(4)).

“(d) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter act, or any rules or regulations issued under the authority of this subchapter act, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, D.C. Law 6-42; (Official.D.C. Code §§ 2-1801.01 et seq.). Adjudication of any infraction of this subchapter act shall be pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, D.C. Law 6-42, (D.C. Official Code §§ 2-1801.01 et seq.).”

(h) Section 10 of The District of Columbia Smoking Restriction Act of 1979, effective September 28, 1979, D.C. Law 3-22, as amended by Section 2(h) of the District of Columbia Smoking Restriction Act of 1979 Amendments Act of 1987, effective March 29, 1988, D.C. Law 7-100, (Official D.C. Code § 7-1708) is amended to read as follows:

“(a) Owner-operated tobacco stores where there are no employees and where there are three or fewer principal owners who each hold at least a 25% interest; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this act.

“(b) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. A room so designated shall have signs posted on the door and in the room indicating that smoking is allowed therein;

“(c) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted.”.

(i) A new Section 13 is added to The District of Columbia Smoking Restriction Act of 1979, effective September 28, 1979, D.C. Law 3-22, as amended by the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, D.C. Law 6-42 as amended by the District of Columbia Smoking Restriction Act of 1979 Amendments Act of 1987, effective March 29, 1988, D.C. Law 7-100, as amended by Section 2(a) of the Smoking Regulation Amendment Act of 1990, effective May 2, 1991, D.C. Law 8-262, as amended by the Smoking Regulation Amendment Act of 1992, effective March 17, 1993, D.C. Law 9-223, and as amended by the Prohibition of Employment Discrimination on the Basis of Tobacco Use Amendment Act of 1992, effective March 17, 1993, D.C. Law 9-240, to read as follows:

“No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this act or reports or attempts to prosecute a violation of this act”.

Sec. 3. Effective date.

This act shall take effect after a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Self-government and Government Reorganization Act (Home Rule Act), approved December 24, 1973 (87 Stat. 813; Official D.C. Code § 1-206.02(c)(1)).

BOARD OF ELECTIONS AND ETHICS

NOTICE OF PUBLICATION

The District of Columbia Board of Elections and Ethics at a special meeting on Wednesday, February 18, 2004 formulated the short title, summary statement, and legislative text of the "Support for a Public Hospital in the District of Columbia." Pursuant to D.C. Official Code § 1-1001.16(d); 2001 ed., the Board hereby publishes the above formulations as follows:

INITIATIVE MEASURE NO. 65

SHORT TITLE

"SUPPORT FOR A PUBLIC HOSPITAL IN THE DISTRICT OF COLUMBIA"

SUMMARY STATEMENT

This initiative, if passed, will restore a full service public hospital in the District of Columbia to provide accessible health care for all residents of the District of Columbia.

A public hospital would provide health care including emergency services to all persons.

LEGISLATIVE TEXT

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Support for a Public Hospital in the District of Columbia".

Sec. 1. Establishment of a Public Hospital.

- (a) There shall be established a Public Hospital in the District of Columbia which shall have a separate legal existence within the District of Columbia government.
- (b) The Hospital shall be governed by the independent Public Health Commission ("Commission"), a Board of Directors, consisting of 9 members. Two (2) members shall be appointed by the Mayor, two (2) members shall be appointed by the Chairman of the Council of the District of Columbia with advice and consent of the Council members, one (1) member shall be elected from among the Advisory Neighborhood Commissioners by

vote of all Advisory Neighborhood Commissioners, and one (1) member shall be appointed by each of:

- (1) The Medical Society of the District of Columbia, or its successor;
 - (2) The District of Columbia Hospital Association, or its successor;
 - (3) The DC Primary Care Association, or its successor;
 - (4) The unions representing the employees of the hospital;
- (c) The members of the Commission appointed by the Mayor and Chairman shall serve four (4) year terms. However, of the initial Commission, one (1) member appointed by the Mayor and one (1) member appointed by the Chairman shall serve two-year terms. The Advisory Neighborhood Commissioner shall be elected within 60 days after the beginning of a new term for Advisory Neighborhood Commissioners. The members appointed by other organizations shall serve at the pleasure of the group appointing them.
- (d) The Commission shall establish and maintain by-laws for the operation of the Public Hospital and the Commission.
- (e) A quorum for the Commission will consist of five (5) members.
- (f) The purpose of the Public Hospital shall be to oversee the provision of comprehensive community-centered health care for the benefit of the residents of the District of Columbia.
- (g) The comprehensive community-centered health care shall be provided through at least one full-service hospital and clinics located throughout the city.
- (h) The Public Hospital shall be subject to all laws applicable to offices, agencies, departments, and instrumentalities of the District of Columbia government.
- (i) To accomplish these purposes, the Public Hospital shall undertake the following
- (1) Grant priority to the employment of residents of the District of Columbia;
 - (2) Make reasonable efforts to foster, encourage, and assist public/private partnerships in order to provide quality health and medical services on a cost effective basis;
 - (3) Consult and cooperate with certified employee organizations and bargaining units in order to smooth the transition from District of Columbia government

employment to the Commission; and

(4) Establish procurement policies based on competition and contracts primarily with businesses that pay District of Columbia taxes and are located within the District of Columbia

(j) All members of the Commission and the General Manager shall be residents the District of Columbia.

(k) No Commission member may be held personally liable for any action taken in the course of his or her official duties and responsibilities as set forth in this act.

Sec.2. Powers of the Commission

The Commission shall have the following powers:

- (a) To do any and all things necessary and proper to carry out its corporate purposes, and for the exercise of the powers given to it in this act;
- (b) To issue regulations and establish policies for contracting and procurement which are consistent with principles of competitive procurement and to make and execute contracts, leases and all other agreements or instruments necessary and appropriate for the exercise of its powers and the fulfillment of its corporate purposes;
- (c) Except with respect to those assets made available for the Commission's use, to acquire, construct, and dispose of real or personal property of every kind and character, including a health facility, or any interest therein for its corporate purposes and shall seek public comment before leasing, acquiring, or disposing of property for other than health care purposes;
- (d) To operate, manage, superintend, maintain, repair, equip, and control any health facility under its jurisdiction and to establish and collect fees, rentals or other charges, including reimbursement allowances, for the sale, lease, or sublease of any such health facility;
- (e) To provide health and medical services to the public directly or by agreement with any person, firm, or private or public corporation or association, to establish policies governing admissions and health and medical services, and to establish and collect fees and other charges, including reimbursement allowances, for the provision of the health

and medical services the Commission provides;

(f) To provide and maintain resident physician and intern medical services and to sponsor and conduct research, development, planning, evaluation, educational, and training programs;

(g) To provide additional services consistent with its corporate purposes, including an ambulance service to transport patients, and to adopt a schedule of appropriate charges for additional services and to provide for the collection thereof.

Sec. 3. Personnel Administration.

(a) Within 6 months of the first meeting of the Commission, the Commission shall promulgate policies, practices, and procedures relating to terms and conditions of employment for personnel employed by the Commission. Until the Commission establishes a personnel system, applicable District of Columbia law shall apply to the Commission.

(b) Nothing in this section shall preclude the establishment of a bargaining unit within the Commission by the District of Columbia Public Employee Relations Board. Within 120 days of the first meeting of the Commission, in accordance with section 3(1), the District of Columbia Public Employee Relations Board shall investigate and render determinations regarding the establishment of the units for working conditions and compensation within the commission, and pursuant to applicable statutory and regulatory provisions, certify labor organizations as the exclusive bargaining agents for these units.

Sec.4. Reports of the Commission

Within 90 days after the end of each fiscal year the Commission shall submit to the Mayor a report setting forth its operations and accomplishments during the fiscal year, revenues and expenses for the fiscal year, assets and liabilities at the end of the fiscal year including a schedule of its bonds, notes or other obligations and the status of reserves, depreciation, and for special sinking, or other funds.

Sec. 5. Representation and indemnification.

(a) The officers and employees of the Commission shall be considered to be District Columbia government employees.

(b) The District of Columbia government shall assume the responsibility for all settlements and judgments that result from acts or occurrences that transpired prior to the date upon which the Commission assumes responsibility for settlements and judgments under subsection (a) of this section.

Sec. 6. Inclusion in the Budget and Financial plan.

This act shall take effect subject to the inclusion of its fiscal effect in an approved budget and financial plan.

Sec. 7. Effective Date

This act shall take effect after a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.03(c)(1)).

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

Application No. 16823 of Humberto Gonzalez, pursuant to 11 DCMR § 3103.2 for a variance from the use provisions to allow a home occupation bed and breakfast with 10 sleeping rooms and four full-time equivalent employees under section 203 in the DCOD/R-5-D District at premises 1720 16th Street, N.W. (Square 178, Lot 800).

HEARING DATES: January 29, 2002; March 19, 2002; June 4, 2002; June 18, 2002; August 6, 2002; October 29, 2002; and November 12, 2002

DECISION DATES: January 7, 2003 and February 3, 2004

DECISION AND ORDER

This application was originally submitted November 19, 2001 by Humberto Gonzalez, the owner of the property that is the subject of the application ("Applicant"). A revised application was submitted April 10, 2002. Following a public hearing, the Board voted 3-2-0 on January 7, 2003 to deny the application.

PRELIMINARY MATTERS

Application. The application, as finally revised, requests a variance from the use provisions under section 203 to allow a bed and breakfast (home occupation) with 10 guest rooms and six full-time and two part-time employees, with a maximum of 24 social events per year hosted by guests and incidental to the bed and breakfast operation, in the DC/R-1-D District at premises 1720 16th Street, N.W. (Square 178, Lot 800).

Notice of Application and Notice of Hearing. By memoranda dated November 29, 2001, the Office of Zoning sent notice of the application to the Office of Planning, the Councilmember for Ward 2, Advisory Neighborhood Commission ("ANC") 2B, and the commissioner for single member district ANC 2B04.

A public hearing on the application was scheduled for January 29, 2002. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on December 13, 2001, mailed notice of the hearing to the Applicant, ANC 2B, and the owners of all property within 200 feet of the subject property. Hearing sessions were held on January 29, March 19, June 4, June 18, August 6, October 29, and November 12, 2002.

Requests for Party Status. ANC 2B was automatically a party in this proceeding. The Board granted party status to (i) the Dupont Circle Citizens Association; (ii) the Residential Action Coalition; (iii) Anne Alvarez and Louis Santucci, Barbara and Frazer

Hilder, P. Kenneth and Leslie M. Jadin, and Janessa and Adrian Robinson, a group of residents of the 1600 block of S Street, N.W. represented by Ken Jadin; and (iv) Laurie Enrich, Margot Polivy, Max Salas and Vickie Bruff-Salas, Russell Stevenson, Mark Siminoff, and Lisa Kaplan, a group of residents of the 1600 block of Riggs Place, N.W. represented by Margot Polivy. A request for party status by Lucinda Eng-Garcia, the Applicant's designer and architect, was denied.

Applicant's Case. The Applicant seeks a variance to allow a bed and breakfast (home occupation) with 10 guest rooms and six full-time and two part-time employees, with a maximum of 24 social events annually hosted by guests of the bed and breakfast. The Applicant asserted that a six-room bed and breakfast would be allowed on the subject property as a matter of right, and that guest-sponsored social events are permitted as a matter of right as an accessory use to a bed and breakfast. The Applicant offered to conduct the bed and breakfast operation subject to a traffic management plan and to specified conditions regulating, among other things, the number, frequency, and timing of special events.

Government Reports. Through testimony at the public hearing and by reports dated January 15, 2002 and May 21, 2002, the Office of Planning ("OP") recommended approval of the application, conditioned on "a favorable recommendation from the Historic Preservation Review Board and suitable assurances regarding operation of the Bed and Breakfast regarding parking and special events, preferably in the form of a written agreement with the neighborhood." Through testimony at the public hearing and by reports dated September 26, November 12, and November 20, 2002, the District of Columbia Department of Transportation ("DDOT") endorsed the Applicant's proposed transportation management plan and indicated no objection to the proposed bed and breakfast use.

ANC Report. With a quorum present at a duly called public meeting held January 16, 2002, ANC 2B unanimously voted to oppose the application and to seek to negotiate an agreement with the Applicant to address issues of neighborhood concern, particularly with respect to special events potentially conducted at the subject property. The ANC indicated its support for efforts to renovate the subject property but recognized concerns about the impact of a large bed and breakfast on the residential neighborhood. ANC 2B reiterated its unanimous opposition to the application at its public meeting held May 8, 2002 with a quorum present.

Parties in Opposition to the Application. The Dupont Circle Citizens Association expressed support for the Applicant's efforts to preserve the interior and exterior of the subject property, but opposed the requested variance absent conditions addressing the "vital issues" of liquor licenses, expansion, and enforcement, mediation, and liaison with the community. Other parties in opposition asserted that the planned bed and breakfast would have an adverse impact on traffic and parking in the neighborhood, particularly as a result of special events hosted at the subject property. The parties in opposition also

argued that the Applicant had not adequately demonstrated hardship because preservation of the interior of the building could be accomplished through other uses of the building.

FINDINGS OF FACT

The Subject Property

1. The subject property is located at 1720 16th Street, N.W. (Square 178, Lot 800) in the Dupont Circle neighborhood of Ward 2.
2. The subject property is improved with a building constructed in 1892-1893 as a single-family detached residence with approximately 12,000 square feet of living space, a courtyard, and a two-car garage. The five-story, 18-room residence was built in a mixture of Victorian, Spanish Mission, and Dutch Colonial styles.
3. The area surrounding the subject property is developed primarily with rowhouses as well as some larger apartment buildings. The Scottish Rite Masonic Temple is across 16th Street from the subject property.
4. The Applicant has a home occupation permit at the subject property authorizing operation of a bed and breakfast with six rooms and one employee. The property is currently undergoing renovation and is not presently a residence or operating as a bed and breakfast.
5. The subject property is located in the 16th Street Historic District and has been designated a contributing building to the historic district. The interior of the building is largely intact and would not be altered by the Applicant's planned renovations. The Applicant indicated an intent to seek a federal historic rehabilitation tax credit for the property, which would require, among other things, maintenance of the interior renovations for five years. The Historic Preservation Office of the Office of Planning indicated its belief that the interior of the subject property is "an architecturally significant space worthy of preservation."
6. Previous uses of the property include single-family residence (1893-1923), embassy/consulate (1924-1938), office (1942-1946), residence and music school (1947-1988), and rooming house with 13 occupants (1991-2001). The music school, with approximately 35 students and six instructors, was operated by Basil and Maria Toutorsky, who also lived in the house.
7. The Applicant purchased the property after it had been on the market for approximately three and a half years. The Applicant testified that he sought to preserve the property, including its interiors, and his sole means to do so was as a bed and breakfast because the property is too large and costly to maintain as a single-family residence.

8. The parties in opposition testified that the immediate neighborhood contains other large former mansions that have been successfully converted to multiple dwellings, and that conversion of the subject property to apartments would be consistent with zoning and would advance several goals of the Comprehensive Plan. The opponents challenged the Applicant's assertion that the renovations necessary for the planned bed and breakfast use would actually preserve all the significant interior features of the subject property as well as his contention that the planned bed and breakfast use was the sole means to preserve the interior.

Proposed Use

9. The Applicant plans to use a portion of the building (approximately 1,800 square feet) as his principal residence and to operate the remainder as a bed and breakfast with 10 guest rooms, with a maximum of two guests per room.
10. The proposed bed and breakfast would permit registered guests to host a maximum of 24 events (such as parties, meetings, weddings, and receptions) per year. Attendance at each event would be limited to 110 people. An event conducted on a weekday (Monday through Friday) would begin no earlier than 8:30 a.m. and end no later than 9:30 p.m. Events conducted on a weekend (Saturday or Sunday) would take place between 11:00 a.m. and 10:30 p.m.; events would not be conducted on consecutive weekends. Tables and chairs for events would be stored on the premises.
11. All events would be held indoors except for wedding ceremonies, which could be held in the outdoor courtyard. No amplified music or food service would be provided in the courtyard.
12. The Applicant did not intend to obtain a liquor license for the bed and breakfast. However, liquor might be served at the events pursuant to a caterer's liquor license.
13. The proposed bed and breakfast would have six full-time and two part-time employees. No more than four non-resident employees would be on the subject property at any given time.
14. Trash generated by the bed and breakfast use would be stored in securely covered receptacles stored in a brick, enclosed area adjacent to the alley. The Applicant stated that trash pickup would be scheduled at least three times per week, and reasonable steps would be taken to prevent vermin.
15. Laundry for the bed and breakfast would be done on-site.

16. The Applicant testified that the proposed bed and breakfast use would not create objectionable noise impacts on surrounding residential properties in the neighborhood primarily because a successful bed and breakfast business depends on preserving peace and quiet for its guests.
17. ANC 2B opposed the application despite its support for efforts to renovate and improve the subject property, citing neighborhood concerns about the impact of a large bed and breakfast on the peace, order, and quiet accorded to a residential neighborhood, particularly with respect to special events potentially conducted at the subject property.

Traffic and Parking

18. The subject property is located at the northwest corner of the intersection of 16th Street, a principal arterial, and Riggs Place, a local street. In addition to its two street frontages, the subject property is bounded by a 13-foot public alley on the west. Both 16th Street and Riggs Place are subject to residential parking restrictions from 7:00 a.m. to 8:30 p.m., Monday through Friday.
19. No additional parking is required at the subject property, as a building located in a historic district that is certified as contributing to the character of the historic district. 11 DCMR § 2100.5.
20. Because of a Metrobus stop adjacent to the subject property, the 16th Street frontage provides limited space for standing, stopping, and parking. Loading and unloading is prohibited in that space.
21. The Applicant proposed a transportation management plan, including a parking program, applicable to the regular daily bed and breakfast business as well as to special events. Pursuant to the plan, prospective guests would be advised of transportation options including Metrorail, Metrobus, taxis, trains, and shuttle buses available from the various airports to destinations in the District. Employees of the bed and breakfast operation would be given farecard vouchers to encourage use of public transportation.
22. Routine deliveries to the subject property would be made through the garage, with a driveway off Riggs Place. According to DDOT, no negative impacts due to deliveries were anticipated because most service deliveries to the proposed bed and breakfast use could likely be handled by vans within the garage at the subject property.
23. One off-street parking space in the garage on the subject property would be made available at all times for guests and deliveries to the bed and breakfast operation.

24. The Applicant testified that the proposed bed and breakfast use would not create a large demand for on-street parking in the neighborhood, because the majority of guests would arrive by taxi or public transportation rather than by private vehicle, or would park in an off-street facility arranged by the Applicant for the duration of their visit. According to the Applicant, additional off-street parking would be made available to guests by contract with a nearby commercial parking facility, while parking for events would be provided off-site by contract with a commercial parking garage or valet parking company, or both. Guests would be expected to drive directly to the off-site parking facility and walk or ride in a taxi to the subject property.
25. DDOT testified that the subject property has the physical configuration and capacity to accommodate the vehicles likely to require access to a bed and breakfast, such as guest arrivals and departures and deliveries of breakfast supplies, provided that the Applicant properly coordinated the use of the garage. However, DDOT also testified that the subject property probably lacks sufficient capacity to handle the number of vehicles likely associated with the proposed special events without generating traffic congestion in the neighborhood. According to DDOT, valet systems are prevalent and work well in other cities to provide for the safe storage of vehicles in congested urban areas where guests are unfamiliar with the available parking alternatives.

Zoning

26. The subject property is located in the Dupont Circle Overlay District (DC)/R-5-D zone. The Dupont Circle overlay is intended to preserve and enhance "a unique resource to the District of Columbia" through retention of "its low scale, predominately residential character, independent small retail businesses, human scale streetscapes, and historic character, given the high-density development pressures caused by the proximity of the Central Employment Area and Dupont Circle Metrorail Station." 11 DCMR § 1501.1. Purposes of the Dupont Circle Overlay District include:
- (a) to protect the integrity of "contributing buildings" in historic districts; to require compatibility of development with the purposes of the Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144, as amended; D.C. Code, 2001 Ed. §§ 6-1101 to 6-1115; and to preclude demolitions or partial demolitions that would lead to an increase in height and floor area ratio inappropriate to the area;
 - (b) to enhance the residential character of the area by maintaining existing residential uses and controlling the scale, location, and density of commercial and residential development;

- (c) to preserve areas planned as open gardens and backyards and protect the light, air, and privacy that they provide;
- (d) to enhance the streetscape by maintaining the public space in front of buildings as landscaped green spaces; and
- (e) to encourage greater use of public transportation and the free circulation of vehicles through public streets and alleys.

See 11 DCMR § 1501.4.

- 27. The Applicant's proposed bed and breakfast use would not alter the height or bulk of the subject property. The Office of Planning, noting that the subject property has been "part of the neighborhood for over 100 years," testified that its height and floor area ratio are "appropriate for the area."
- 28. The Office of Planning testified that the Applicant's proposal "meets the applicable purposes" of the Dupont Circle overlay district "by preserving the existing historic structure," including much of the interior and "existing gardens, walls and fences that have added to the character of this historic structure."

Requested Variance

- 29. The Applicant stated that variance relief was needed from two provisions of § 203 to permit 10 guest rooms and to increase the number of employees. The Applicant noted that variance relief might also be necessary from the limitation on the number of clients, guests, or customers permitted as a matter of right (*i.e.* eight), but asserted that the limitation seemed inapposite in the case of a matter-of-right bed and breakfast with four or six rooms.
- 30. According to the Applicant, the requested variance would merely increase the intensity of a permitted use, rather than introduce a use not permitted by right or by special exception in the R-5-D zone, and therefore was consistent with the Comprehensive Plan and would not impair the zone plan or the intentions of the zoning regulations.
- 31. The Applicant stated that the variance was warranted because of the unique nature of the historic property, which was too large and expensive to serve as a single-family dwelling, and because the proposed 10-room bed and breakfast operation was the sole means to avoid conversion of the building to condominiums or other use that would not preserve the ornate historic interior of the building. The Applicant also asserted that, as a contributing building in a historic district, the building could not be demolished and replaced without "extraordinary justification," and that the Dupont Circle overlay district further restricted

permitted uses of the subject property.

32. According to the Applicant, the serious hardship that would result from the strict application of the Zoning Regulations to the subject property was not self-imposed; instead, a unique and exceptional condition that created undue hardship arose from the exceptionally large nature of the structure and the quality and integrity of its interior. The Applicant testified that the subject property was on the market for almost four years without selling as a single-family residence, embassy, or other use; and that the property did not attract single-family buyers due to its large size, high cost to maintain, and cost of needed repairs, but finally attracted investors interested in turning the subject property into condominiums, which would destroy the historic integrity of the building. The Applicant asserted that it was not economically feasible to maintain the property without the requested variance.
33. The Applicant asserted that the requested variance would not have an adverse impact on neighboring property due to traffic, because the number of trips generated by the proposed bed and breakfast use would not add appreciably to the traffic on 16th Street, and because parking for the occasional events taking place at the subject property would be subject to restrictions implemented by the Applicant.
34. The Applicant stated that the requested variance would provide benefits including employment, preservation of the historic integrity of the property, and restoration of the building that would beautify the block and community and give the community a home feel. According to the Applicant, operation of a bed and breakfast subject to the proffered conditions would make the subject property a quieter and more manageable place than it would be as a single-family residence, rooming house, embassy, organization, or condominiums.
35. The Office of Planning testified that the extraordinary or exceptional situation of the subject property resulting in an undue hardship arose from the fact that the "existing historic mansion is extraordinarily large for a single-family home and the upkeep and maintenance of such a large structure would be a significant financial burden to a single family," and because the "unique, historic interior of the structure is worthy of preservation" but "[m]any of the other uses allowable in the zone would require extensive remodeling of the interior of the structure" and "would require extensive changes to the yard areas of the building altering the historic landscape of the property." According to OP, "these situations along with the character of the neighborhood combine to create an exceptional situation" of the subject property, and the proposed bed and breakfast use was the best means to preserve the interior.
36. According to OP, the requested variance could be granted without causing

substantial detriment to the public good and without impairing the intent, purpose, and integrity of the zone plan. OP noted that the proposed bed and breakfast use of the subject property would involve minimal exterior improvements, that the Applicant had proffered conditions regarding parking, employee transportation, and limitations on special events, and that the proximity of institutional and high-density residential uses to the subject property and 16th Street, a major arterial, established more intense use to the south and east in the vicinity of the subject property.

37. OP testified that the proposed bed and breakfast use would further the Comprehensive Plan goals of encouraging the renovation and adaptive reuse of existing structures rather than demolition. According to OP, the requested use variance would allow preservation and restoration of a historic interior that might not otherwise be preserved, thereby maintaining continued productive use of the historic building. OP also noted that the interior would be more accessible to the public through use of the subject property as a bed and breakfast than as apartments.

CONCLUSIONS OF LAW

Under the Zoning Regulations, home occupations are permitted as accessory uses to residential uses provided that they are compatible with the residential neighborhood in which they are located. 11 DCMR § 203.1. The intent of the home-occupation provisions of the Zoning Regulations is to protect residential areas from adverse effects of activities associated with home occupations, while permitting residents of the community the opportunity to use the home as a workplace and source of livelihood under specific regulatory conditions. *Id.* Permitted home occupations include bed and breakfast facilities, so that the owner of a dwelling may operate a bed and breakfast facility offering rooms and breakfast to guests on a daily basis, subject to certain conditions. *See* 11 DCMR § 203.8.

For purposes of the relevant provisions of the Zoning Regulations, a “home occupation” is a “business, profession, or other economic activity conducted full-time or part-time in a dwelling unit that serves as the principal residence of the practitioner of the home occupation.” 11 DCMR § 203.2. The home occupation must be “clearly secondary to the use of the dwelling unit for residential purposes.” 11 DCMR § 203.4(a). The parties in opposition argue that the planned bed and breakfast operation would not be secondary to the use of the subject property for residential purposes because the Applicant plans to use only about 15 percent of the interior space as his residence.

The Board does not agree. The subject property was built as a single-family dwelling and has been used for residential purposes throughout most of its existence. The Applicant plans to live in the subject property, albeit in a relatively small portion of a large dwelling, and does not plan to make any renovations to the exterior of the subject

property that would alter its residential appearance or character. Bed and breakfast home occupations are specifically exempted from floor area limitations that would otherwise restrict the space that may be utilized in a home occupation. *See* 11 DCMR §§ 203.4(b), 203.8(d). Under the Zoning Regulations, "home occupations such as bed and breakfasts are considered accessory uses; the principal use is deemed to be the residential use." *See Dupont Circle Citizens Association v. D.C. Board of Zoning Adjustment*, 749 A.2d 1258 at 1261 (D.C. 2000). The term "principal use," as used in the Zoning Regulations, "distinguish[es] the accessory use from the more dominant use to which it is 'customarily incidental and subordinate,' without further intending that the more dominant use necessarily and in every case must be the predominant use of the property in question." *Id.* at 1263. The Board concludes the Applicant has satisfied the burden of proof with respect to 11 DCMR §§ 203.2 and 203.4(a).

However, the bed and breakfast operation planned by the Applicant does not conform to the requirements of the Zoning Regulations in several respects. First, the Applicant proposes to offer 10 guest rooms. A home-occupation bed and breakfast may have two sleeping rooms as a matter of right, or as many as six if approved by the Board as a special exception in the case of a home-occupation bed and breakfast operated in a dwelling located in a historic district and certified as contributing to the character of that historic district.¹ 11 DCMR § 203.8(c)(1). Secondly, the proposed bed-and-breakfast operation would have six full-time and two part-time employees, with at most four non-resident employees on the subject property at any given time. The Zoning Regulations specify that no more than one person who is not a resident of the dwelling unit shall be engaged or employed in the home occupation. 11 DCMR §§ 203.4(d), 203.8(h). In addition to requirements set forth in 11 DCMR § 203.8 specific to bed and breakfast home occupations, the Applicant's proposed use of the subject property must also comply with certain requirements applicable to home occupations generally. *See* 11 DCMR § 203.8(h). These requirements include that vehicular trips to the premises by visitors, customers, and delivery persons shall not exceed eight trips daily on a regular and continuing basis, 11 DCMR § 203.4(l); and that the practitioner shall have no more than eight clients or customers on the premises in any one-hour period, 11 DCMR § 203.4(m).

¹ The Board notes the Applicant's assertion that the subject property is permitted to have six sleeping rooms as a matter of right since the subject property contributes to a historic district. However, the maximum number of sleeping rooms permitted as a matter of right in a home occupation bed and breakfast is two. 11 DCMR § 203.8(c). A dwelling owner may be permitted to increase the number of sleeping rooms to four with Board approval as a special exception pursuant to 11 DCMR § 203.10(b). *See* 11 DCMR § 203.8(c)(1). In the case of "a dwelling that is an historic landmark, or that is located in a historic district and certified by the State Historic Preservation Officer as contributing to the character of that historic district," the dwelling owner may be permitted to increase the number of sleeping rooms to six with Board approval as a special exception pursuant to § 203.10(b). *Id.* Thus, a home occupation bed and breakfast operated on the subject property is permitted two sleeping rooms as a matter of right, and up to six sleeping rooms if approved by the Board as a special exception pursuant to 11 DCMR §§ 203.10.(b) and 3104.

The Applicant requested zoning relief from two requirements – pertaining to the number of guest rooms and to the number of non-resident employees – but later noted a need for relief with respect to the number of guests on the premises as well.² A home occupation that does not satisfy all requirements of § 203 may be permitted by special exception, provided that the requested zoning relief can be granted without modification of more than two of the applicable requirements consistent with the general purposes and intent of the home occupation provisions. A request to modify more than two of the requirements is deemed a request for a variance. 11 DCMR § 203.10. The Board concludes that variance relief pursuant to 11 DCMR § 203.10(d) is necessary because the Applicant's proposed use would require modification of more than two of the requirements found in §§ 203.4 through 203.8.

The Board is authorized to grant a variance from the strict application of the zoning regulations where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of the property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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. D.C. Official Code § 6-641.07(g)(3) (2001); 11 DCMR § 3103.2.

The Zoning Regulations do not specify whether a variance from the provisions of § 203 should be considered an area variance or a use variance. The Board concurs with the Applicant that the difference between a use variance and an area variance may be "one of degree." *See Wolf v. D.C. Board of Zoning Adjustment*, 397 A.2d 936, 941 (D.C. 1979). Unlike the Applicant, however, the Board concludes that the variance sought by the Application is properly considered in the nature of a use variance, because approval of the zoning relief requested by the Applicant would introduce a use into the zone district under conditions other than those allowed as a matter of right or required for special exception approval, and the proposed use of the subject property could potentially alter the character of the zone district. The Application seeks approval for a home occupation bed and breakfast facility that would be larger in terms of number of guest rooms, employees, and customers than is permitted as a matter of right or by special exception;

² The Applicant's submission of proposed findings of fact and conclusions of law states that variance relief is needed with respect to the number of guest rooms, the number of employees, and the number of clients or customers on the premises in any one-hour period. The submission asserts, without elaboration, that "[n]o more than two vehicles will be used in the home occupation and vehicular trips to the premises by visitors, customers and delivery persons will not exceed 8 trips daily on a regular and continuing basis." (*See Exhibit No. 107*). The Office of Planning had earlier concluded that the Application should be considered a request for a use variance from 11 DCMR § 350.4, concerning uses permitted as a matter of right in the R-5 zone, rather than a variance from § 203, because § 203 imposes "many restrictions" on home occupations, and several of the § 203 provisions "are problematic" for the Applicant's proposed use. The "problematic" provisions identified by OP were § 203.4(a), (d), (g), (l), and (m). *See OP Report (May 21, 2002)*.

the more intensive use of the subject property, even for the same type of use that is permitted as a matter of right on a smaller scale, could potentially have adverse effects incompatible with the residential neighborhood in which it would be located.³

The purpose of the home occupation provisions – to protect residential areas from adverse effects of activities associated with home occupations – also suggests that the relief sought by the Applicant should be deemed a use variance, with the Board's inquiry focused on the proposed use of the subject property relative to a smaller home occupation bed and breakfast permitted as a matter of right or by special exception in the Residence zone district. ANC 2B raised concerns about potential adverse effects of the Applicant's proposed bed and breakfast operation on the surrounding residential neighborhood, and the parties in opposition argued that the Applicant's proposal would alter the residential character surrounding the subject property through the introduction of a large bed and breakfast business on the site, causing noise and other negative impacts on the quality of life in the neighborhood. These contentions suggest that the Applicant's proposed use could potentially alter the character of the zone district, and therefore that the requested zoning relief should be deemed a use variance. See, e.g., 1 E. Ziegler, Rathkopf's The Law of Zoning and Planning § 58:4, p. 58-17 (4th ed. 2001) ("If the variance will permit a use of the land that changes the character of the neighborhood, then it is more likely that the variance will be held to be a use variance").

The Board notes that both the Applicant and the parties in opposition made arguments regarding undue hardship, the standard applicable to a request for a use variance. *Palmer*, 287 A.2d at 541.

In deciding to apply the more stringent "undue hardship" standard applicable to a use variance, the Board notes that the requested zoning relief is not in the nature of an area variance, because the Applicant's proposed use does not entail any addition to or modification of the subject property that would require relief from applicable area requirements. See *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972) (an area variance, relating to restrictions such as side yard, rear yard, frontage, setback or minimum lot requirements, does not alter the character of the zoned district, whereas a use variance seeks a use ordinarily prohibited in the particular district). The Applicant's proposal to operate a 10-room bed and breakfast, where two guest rooms are permitted as a matter of right, is one factor that distinguishes the Application from the regulation at issue in *Monaco v. D.C. Board of Zoning Adjustment*, 461 A.2d 1049 (D.C. 1983), cited by the Applicant. That case concerned a request for a deviation from a minimum area requirement under a regulation that authorized office use by special

³ The Board notes that the Zoning Regulations specify a use variance under analogous circumstances pertaining to the addition of an accessory apartment to a single-family detached dwelling, 11 DCMR § 202. The Board may modify or waive not more than two of the applicable requirements, which concern generally the minimum lot area, gross floor area of the dwelling and the accessory apartment, configuration of the accessory apartment, owner occupancy, and aggregate number of persons living on the premises. See 11 DCMR § 202.10. A request to modify or waive more than two requirements is "deemed a request for a use variance." 11 DCMR § 202.10(i)(3).

exception in certain circumstances; by contrast, the Applicant's proposed bed and breakfast operation seeks to use the subject property, without deviation from any applicable area requirement, in a manner that would be significantly more intensive than permitted as a matter of right or by special exception⁴.

The Board's initial inquiry in a request for a variance considers whether the subject property exhibits exceptional narrowness, shallowness, or shape, or exceptional topographical conditions or other extraordinary or exceptional situation or condition of the property. The District of Columbia Court of Appeals has held that "existing structures on the land are part of the 'property' and may be 'exceptional conditions' for variance purposes." *Draude v. D.C. Board of Zoning Adjustment*, 527 A.2d 1242, 1255 (D.C. 1987), citing *Clerics of Saint Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974).

Based on the testimony and evidence in the record and the Findings of Fact, the Board concludes that the subject property exhibits an "extraordinary or exceptional situation or condition." The existing building on the subject property was constructed and initially used as a single-family dwelling, but has not been used solely as a single-family residence since 1923 and is not likely to be used again as a single-family dwelling due to its large size. The former mansion is architecturally and historically significant, and has been designated a contributing building to the 16th Street historic district, which restricts the owner's ability to demolish the building and redevelop the subject property.

A use variance cannot be granted absent a showing that the strict application of the Zoning Regulations would result in "exceptional and undue hardship upon the owner of the property," because a use variance "seeks a use ordinarily prohibited in the particular district" and thus would "alter the character" of that zone district. *Palmer*, 287 A.2d at 541. "The Board generally cannot grant a variance just because the property makes it difficult for the owner to construct a particular building or to pursue a particular use without a variance if the owner could use or improve the land in other ways compatible with zoning restrictions." *Draude*, 527 A.2d at 1255, citing *Palmer*, 287 A.2d at 540 (use variance cannot be granted unless reasonable use cannot be made of the property in manner consistent with the Zoning Regulations; an inability to put property to more profitable use or loss of economic advantage is not sufficient to constitute hardship). To be granted a variance, the Applicant must show that strict application of the Zoning Regulations would preclude the use of the property for any purpose to which it may reasonably be adapted. *Bernstein v. D.C. Board of Zoning Adjustment*, 376 A.2d 816, 819 (D.C. 1979). A mere desire to use property in a given manner, or in a manner designed to return a greater profit, does not constitute a showing of an undue hardship that will support the granting of a use variance. *Bernstein*, 376 A.2d 816, 820. See also *Taylor v. D.C. Board of Zoning Adjustment*, 308 A.2d 230, 236; *Silverstone v. D.C. Board of Zoning Adjustment*, 396 A.2d 992 (D.C. 1979); and *Capitol Hill Restoration Society, Inc.*

v. D.C. Board of Zoning Adjustment, 398 A.2d 13 (D.C. 1979) (unique circumstances of property, not owner's personal circumstances, provide basis for granting variance).

The Applicant claims that undue hardship will result from the strict application of the Zoning Regulations to the subject property because the existing building is too large and costly to serve as a single-family residence, because maintenance of the subject property without the requested variance would be economically infeasible, and because the historic integrity of the mansion, including its ornate interior, would be destroyed if the building is not used as a bed and breakfast facility but is converted to another potential use such as condominiums. The Office of Planning testified that hardship arose from the significant financial burden associated with subject property if used as a single-family dwelling and from the fact that the interior of the building is worth preserving, but many uses permitted on the subject property as a matter of right would require extensive changes to the property whereas the proposed bed and breakfast is the best means to preserve the interior. However, the parties in opposition presented testimony that the Zoning Regulations permit several uses of the subject property besides a home occupation bed and breakfast, and contended that the interior of the building could be preserved through those other uses, as has been done in other large, historic mansions in the vicinity of the subject property.

The Board is not persuaded that the strict application of the Zoning Regulations will result in undue hardship upon the owner of the subject property. The Applicant has not demonstrated that the building could not be put to an alternative use permitted under the Zoning Regulations that would be economically feasible. The Zoning Regulations facilitate the adaptation of historic properties to new uses by offering certain relief from otherwise applicable requirements, such as a waiver of the parking requirement, and by permitting, as a special exception, certain uses not otherwise allowed in a Residence zone, such as the use of residential buildings by nonprofit organizations, 11 DCMR § 217, and a greater number of guest rooms in a home occupation bed and breakfast, 11 DCMR § 203.8(c)(1). This flexibility recognizes constraints potentially associated with the use of historic properties and enlarges the scope of their potential uses consistent with the Zoning Regulations.

The Board credits the testimony of OP that the ornate interior of the subject property is significant and worthy of preservation. However, the Applicant has not adequately demonstrated that the proposed bed and breakfast use is the sole means to preserve the building's interior, or that an alternative use of the subject property consistent with the Zoning Regulations would require its destruction. Nor would a grant of the requested variance ensure the preservation of the building's interior in the future. The Applicant has indicated an intent to seek federal historic preservation tax incentives for the certified rehabilitation of the subject property, which would require preservation of the interior for five years after completing the rehabilitation; however, the Applicant has not sought designation of the interior by the Historic Preservation Review Board or undertaken other

possible means of ensuring the long-term preservation of the historic interior of the building.

The Board further concludes that any hardship on the Applicant does not arise from the strict application of the Zoning Regulations to the subject property but is self-created. The Applicant failed to demonstrate that no reasonable use could be made of the property in a manner consistent with the Zoning Regulations, or that preservation of the building's interior required or warranted the grant of the requested variance. Rather, the Applicant claims undue hardship arising from a desire to use the property in a manner inconsistent in several respects with a home occupation bed and breakfast permitted as a matter of right or by special exception.

The "self-created hardship" rule precludes the grant of a use variance when "the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the [zoning regulations] have themselves been caused or created by the property owner, [because] the essential basis of a variance – that is, that the hardship be caused solely through the manner of operation of the [zoning regulations] upon the particular property – is lacking." *Foxhall Community Citizens Ass'n v. D.C. Board of Zoning Adjustment*, 524 A.2d 759, 761, citing 3 A. Rathkopf and D. Rathkopf, *THE LAW OF ZONING AND PLANNING*, § 39-01 (4th ed. 1986); (citations in accord omitted). The self-created hardship rule applies to owners who purchase property with actual or constructive knowledge of zoning restrictions from which they intend to seek administrative relief. *Foxhall*, 524 A.2d at 761, citing 3 R. Anderson, *AMERICAN LAW OF ZONING* § 20.44, -45. See also *Dwyer v. D.C. Board of Zoning Adjustment*, 320 A.2d 306 (D.C. 1974), citing *Clouser v. David*, 114 U.S.App.D.C. 12, 13, 309 F.2d 233, 234 (1962) (hardship must result from location, situation, or condition of property, and not solely from owner's appropriation of it for commercial purposes without first having obtained necessary change in zoning).

With respect to the need to afford great weight to the issues and concerns raised by the affected ANC, the Board notes that ANC 2B's opposition to the application stemmed from concerns about potential adverse effects of the home occupation bed and breakfast on the surrounding residential neighborhood. Since, the Board's denial of this application results from the applicant's failure to demonstrate undue hardship, the Board does not reach the issue of whether the application can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. Therefore, the BZA need not address the specific issues and concerns raised by the affected ANC, which pertain exclusively to that portion of the variance inquiry.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the issues and concerns of ANC 2B, the Board concludes that the Applicant has not satisfied the burden of proof for a variance from the provisions of § 203 to allow a home occupation bed and breakfast with 10 sleeping rooms and more

than one non-resident employee in the DCOD/R-5-D District at premises 1720 16th Street, N.W. (Square 178, Lot 800).⁵ For the reasons stated above, it is hereby **ORDERED** that the application be **DENIED**.

VOTE (January 7, 2003): **3-2-0** (Anne M. Renshaw, Carol J. Mitten, and David A. Zaidain to deny the application; Geoffrey H. Griffis and Curtis L. Etherly, Jr., opposed)

Because the term of Board member Anne M. Renshaw expired before issuance of this Order, the Board conducted a second decision meeting on February 3, 2004 and voted to **ADOPT** this **ORDER** as the decision of the Board as follows:

VOTE (February 3, 2003): **4-0-1** (Curtis L. Etherly, Jr., David A. Zaidain and Geoffrey H. Griffis to adopt the order; Carol J. Mitten to adopt the order by proxy; Ruthanne G. Miller not voting, not having participated in the case).

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: FEB - 9 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. MN/rsn

⁵ Based on the testimony and evidence in the record, the Board is unable to determine whether the Applicant's proposed use of the subject property would comply with applicable home-occupation limits on the number of vehicular trips to the premises by visitors, customers, and delivery persons, 11 DCMR § 203.4(l), and on the number of clients or customers on the premises, 11 DCMR § 203.4(m). Nor has the Applicant justified the grant of a variance from those requirements. The Board concludes that the Applicant has not met the burden of proof with respect to either compliance with or variance relief from zoning requirements pertaining to the number of daily vehicular trips to the premises by visitors, customers, and delivery persons or to the number of eight clients or customers on the premises in any one-hour period.

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

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

HEARING DATE: January 13, 2004

DECISION DATE: February 3, 2004

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) 6A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. ANC 6A did not participate in the application. The Office of Planning (OP) submitted a supplemental report in conditional support of the application. The Capitol Hill Restoration Society submitted a letter in conditional support for 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 § 2003.1. No parties appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 2003.1, 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. The Board concluded that the coffee sandwich shop is a neighborhood facility.

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

1. The special exception shall be in effect for **THREE (3)** years.
2. The applicant shall install trash receptacles outside of the facility.
3. The applicant shall install exterior lighting fixtures on the front of the facility. Lighting shall be so arranged that all direct rays are confined to the subject property.
4. The applicant shall remove litter and debris on the exterior of the premises on a daily basis.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., David A. Zaidain, and Peter G. May to approve).

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: FEB 09 2004

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

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

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

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR

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

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

ZONING COMMISSION NOTICE OF FILING

Case No. 04-04

(Consolidated PUD & Related Map Amendment

Lots 78 and 79 in Square 5140)

February 17, 2004

THIS CASE IS OF INTEREST TO ANC 7C

On February 10, 2004, the Office of Zoning received an application from Carver 2000 Tenants Association, Inc. (the "applicant") for approval of a consolidated planned unit development (PUD) and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lots 78 and 79 in Square 5140 in northeast Washington, D.C. (Ward 7). The property is currently zoned R-5-A. The applicant seeks a map amendment to rezone the property to R-5-B. 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 ORDER NO. 03-24
CASE NO. 03-24
(Consolidated Planned Unit Development and
Zoning Map Amendment for 2126 Wyoming Avenue, NW)
January 12, 2004

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on October 16, 2003, to consider applications from The Kalorama D.C. Group, LLC, for consolidated review and approval of a planned unit development and related zoning map amendment from the R-3 District to the R-5-D District. The Commission considered the applications pursuant to Chapters 24 and 30 of the 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 Public Hearing

1. On July 14, 2003, The Kalorama D.C. Group, LLC (the "Applicant"), owner of Square 2528, Lot 911 (the "Subject Property"), filed applications for the consolidated review and approval of a Planned Unit Development ("PUD") and related Zoning Map amendment (collectively, the "Applications").
2. At its July 31, 2003 public meeting, the Zoning Commission (the "Commission") determined to set the Applications for public hearing.
3. The Zoning Commission held a public hearing for the Applications on October 16, 2003. At the end of the public hearing, the Applicant was requested to submit certain additional information regarding its proposed plans and materials, which materials were submitted to the Commission on October 30, 2003.
4. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 2D, the ANC within which the Subject Property is located.

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5. At its November 12, 2003, meeting, the Zoning Commission took proposed action by a vote of 4-0-1 to approve with conditions the Applications and plans presented at the public hearing and in the Applicant's post-hearing submission, filed with the Zoning Office on October 30, 2003 and included in the Official Record at Exhibit 37.
6. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated November 26, 2003, found that granting the Applications would not adversely affect the identified Federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.
7. The Commission took final action by a vote of 4-0-1 to approve the Applications at its public meeting on December 8, 2003.

The Subject Property and Surrounding Area

8. The Subject Property is located at 2126 Wyoming Avenue, NW (Lot 911 in Square 2528), within the city block bounded by California Street on the south, Connecticut Avenue on the east, 23rd Street on the west and Wyoming Avenue on the North.
9. The Subject Property has a rectangular shape, with 100 feet of frontage along Wyoming Avenue and a depth of 165 feet. The Subject Property is bounded to the south by an alley that varies in width between 10 and 16 feet. The resulting total land area for the Subject Property is approximately 16,500 square feet, which exceeds the minimum area requirement of 15,000 square feet for a PUD in the R-5-D District. The site is relatively flat with the existing grade raised approximately 7-8 feet above the curb elevation along Wyoming Avenue.
10. The Subject Property is improved with a three-story, 34.3-foot tall Flemish-revival mansion, which formerly housed the Field School.¹ The mansion building was constructed in 1907 as a single-family residence and had been used as a school since the 1930s. A two-story carriage house is located at the rear of the site.
11. The Subject Property is located within the Sheridan-Kalorama neighborhood, a predominantly residential area bounded roughly by Connecticut Avenue to

¹ Building height calculated from finished grade at the middle of the front of the building to the ceiling of the top story.

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the east, Florida and Massachusetts Avenues to the south, and Rock Creek Park to the north and west. Sheridan-Kalorama is comprised of a wide variety of housing types, from row house to suburban mansion to high-rise apartment building. Extensive development of the Sheridan-Kalorama neighborhood began at the end of the nineteenth century and continued into the early twentieth century. The neighborhood contains the most extensive collection of revival-style architecture in the District, including the existing building on the Subject Property, with its Flemish-revival design. In 1989, the Sheridan-Kalorama Historic District was added to the District's Inventory of Historic Sites, pursuant to the District of Columbia Historic Landmark and Historic District Protection Act (the "Preservation Law").

12. Due to the location of the Subject Property within the Sheridan-Kalorama Historic District, all proposed new construction and all proposed exterior alterations to the existing buildings on the Subject Property are subject to review and approval by the District of Columbia Historic Preservation Review Board ("HPRB") pursuant to the Preservation Law.
13. During the twentieth century, a number of residential buildings within the Sheridan-Kalorama neighborhood were transformed from residential use and utilized as private schools, foreign missions, and other institutional uses. A number of large apartment houses are also located in the immediate vicinity of the Subject Property, especially close to and along Connecticut Avenue, some of which date to the early twentieth century, while others are of newer construction.
14. Beginning at 23rd Street, NW, to the west of the Subject Property, the south side of Wyoming Avenue is improved with row buildings, containing a mix of single-family and multi-family residential, along with several foreign missions. From a point east of its intersection with Thornton Place, development along the south side of Wyoming Avenue transitions from this row building pattern to semi-detached dwellings, including the mansion building on the Subject Property, then to the Jurys Normandy Inn building at 2118 Wyoming Avenue, NW, and finally back to row buildings fronting onto Connecticut Avenue.
15. The north side of Wyoming Avenue, from Thornton Place to Connecticut Avenue, includes a variety of building styles and sizes, both modern and historic. There are apartment houses at both ends, with three foreign mission buildings occupied by the Algerian Embassy and with a number of detached buildings in between, several of which are currently vacant but which have been historically used for private school and foreign mission uses.

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16. A similar mixture of uses is found on Kalorama Road, the next block north of Wyoming Avenue. By contrast, the building mix on California Street, immediately south of Wyoming Avenue, is predominantly large apartment houses, including the six-story Brighton (2123 California Street) and the nine-story apartment building at 2000 Connecticut Avenue (northwest corner of California Street and Connecticut Avenue).
17. The Generalized Land Use Map of the Comprehensive Plan designates the Subject Property as moderate-density residential.

Existing and Proposed Zoning

18. The Subject Property is located in the R-3 District, which is designed essentially for row dwellings. Pursuant to §400 of the Zoning Regulations, the maximum permitted height in the R-3 District is 40 feet and three stories.² Minimum lot dimensions for the Subject Property, per §401 of the Regulations, are 2,000 square feet and 20 feet in width for row dwellings; 3,000 square feet and 30 feet in width for semi-detached dwellings; and 4,000 square feet and 40 feet in width for all other structures. Pursuant to §403.2, a maximum 40% lot occupancy is permitted.
19. The Applicant requests rezoning of the Subject Property to R-5-D. The Subject Property is located adjacent to R-5-D zoning to its east. R-5 Districts are general residence districts created to permit design flexibility by allowing all types of urban residential development. Pursuant to §400 of the Zoning Regulations, the maximum permitted height in the R-5-D District is 90 feet with no limit on the number of stories. There are no minimum lot dimension requirements in the R-5-D District according to §401.3. Pursuant to §402 of the Zoning Regulations, the maximum density is 3.5 FAR. According to §403.2 of the Regulations, 75 percent lot occupancy is permitted in the R-5-D District.

The PUD Project

20. The Applicant filed the Applications in July 2003, after having first initiated discussions with community representatives 13 months earlier, in June 2002. Throughout the application process, the Applicant has maintained open and ongoing dialogue with the ANC, with interested neighbors and with representatives of various interested community organizations.

² Building height calculated from finished grade at the middle of the front of the building to the ceiling of the top story.

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21. The Applicant proposes the rezoning to R-5-D in combination with the PUD in order to permit the development of multi-family housing on the site, which is not permitted in the R-3 District.
22. The Applicant proposes to renovate and convert the historic former mansion into two townhouses, to renovate and convert the existing carriage house at the rear of the site into two enclosed parking garages for two vehicles each, as well as for storage, and to construct a three-story, four-unit condominium apartment building (the "New Building") on the vacant eastern portion of the site (collectively, the "Project"). The Project will also include outdoor parking for four cars on a parking pad adjacent to the alley at the rear of the Subject Property, one for each of the four condominium units in the New Building.
23. Alteration to the mass of the existing mansion building will be minor. The total additional density for the existing building will be approximately 670 square feet of gross floor area.
24. The design of the New Building is intended to provide a suitable and complementary addition to the surrounding historic buildings and to act as a buffer to the historically non-contributing Jurys Normandy Inn building at 2118 Wyoming Avenue, NW. The contemporary design of the New Building takes a number of cues from nearby buildings and features. However, it is similar in scale to many of the historic townhouse structures on the street and incorporates both horizontal and projecting elements that reference adjacent historic buildings. These elements include an entry door recess, masonry details that reinforce existing horizontal lines, projecting bays, punched multi-light windows, and recessed balconies. The top level is designed to incorporate large amounts of glass to reduce the apparent scale of the new building and to create a transition from the larger mass of the hotel to the east to the lower existing eave lines on the historic mansion to the west. The building mass is also designed to allow an appropriate amount of courtyard space between the New Building and the mansion.
25. The Applicant and its Architect have worked closely with the historic preservation community to develop a design that is compatible with the character of the historic district. The Project's design has received support from the Sheridan-Kalorama Historical Association ("SKHA"). The HPRB approved the design concept and massing for the Project on September 25, 2003, as compatible with the historic character of the Sheridan-Kalorama Historic District. As directed by the HPRB, the New Building has been designed to read separately from the mansion building, and also to isolate the new construction from the abutting Jurys hotel.

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26. The materials proposed for the New Building are of high quality and are consistent with the historic fabric of the neighborhood. The exterior materials include neutral color brick masonry walls with stone lintels, trim and sills, projecting bays clad in coursed limestone, and divided-light metal windows. The projecting balconies include stone flooring and steel or wrought iron railings.
27. A primary goal of the landscaping for the Project is to create an urban courtyard garden surrounding the mansion and the New Building. Currently, a large amount of the existing open space is covered by paving, most of which will be removed as part of the Project. The driveway along the west property line will be retained approximately 20 feet beyond the existing *porte cochere*, which will maintain the historic relationship of this structure to the mansion and to the street. The landscape design incorporates much of the existing plant material. The courtyard planting will be foundation bushes and perennials, with ornamental trees in strategic locations.
28. Notwithstanding the rezoning to R-5-D, the proposed density of the Project is 1.31 FAR, approximately one-third of that which is permitted in the R-5-D District. The proposed building height is consistent with the permitted maximum height in the R-3 zone. The proposed number of units and the proposed density are less than the theoretical density that would be permitted under the R-3 zoning as a matter of right. The rezoning of the Subject Property to the adjacent R-5-D designation is requested in order to allow the construction of a single four-unit multiple-dwelling building on the site, rather than separate townhouses on the vacant portion of the lot. This development configuration was achieved after extensive discussions with both the community and the Office of Planning's zoning and historic preservation divisions. In terms of intensity of use, the proposed six-unit residential Project will be far less intense than the prior school use, which brought as many as 288 students, faculty and staff to the Subject Property and through the neighborhood on a daily basis.

Public Benefits and Project Amenities

29. The following superior benefits and amenities will be created as a result of the Project:
 - a. **Housing.** The Project will replace an institutional use with up to six new residential units of appropriate size and scale in this residential neighborhood, for a total of approximately 21,615 square feet of residential space on the Subject Property.

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- b. ***Urban Design and Architecture.*** The Applicant has presented an architectural design and site plan for the Project that are appropriate and compatible for this location. The Project provides for the sensitive rehabilitation of the existing mansion building and carriage house for residential uses, to include accessory parking. The Project also involves the sympathetic architectural massing, transitioning and detailing of the new infill construction on the adjacent vacant portion of the site. This results in an improved streetscape by masking the blank side wall of the six-story (+roof structure) neighboring Jurys Normandy Inn and the unarticulated rear elevation of the nine-story apartment house immediately south of the Subject Property.
- c. ***Site Planning and Efficient Land Utilization.*** The Project represents an appropriate renovation and reintroduction of residential use for the existing mansion building on the site, and a wise use of undeveloped space in an otherwise fully-developed streetscape, which space is at the junction of two zoning districts - one high density (R-5-D) and the other of a lower density (R-3). The three-story, four-unit New Building represents rational, prudent site planning and efficient and economical land utilization of an appropriate scale and density on the site.
- d. ***Open Space and Landscaping.*** The extensive paving currently occupying a large portion of the site will be replaced by a generous amount of new plantings. A primary goal of the landscaping for the Project is to create an urban courtyard garden surrounding the mansion and the New Building. The overall Project design also makes unique and efficient use of the open space created between the mansion and the New Building, providing the requisite side yard space for the New Building while at the same time allowing the New Building to be designed with the greatest available amount of fenestration and other building openings, consistent with the Building Code and the historic preservation approvals.
- e. ***Historic Preservation.*** The Project incorporates significant historic preservation benefits. The Project provides for rehabilitation of two significant contributing buildings to the Sheridan-Kalorama Historic District. As set forth above, the Project involves only a minor change in the massing of the historic mansion building. The driveway along the west property line will be retained approximately 20 feet beyond the existing *porte cochere* in order to maintain the historic relationship of the mansion with the street. In addition to preserving the historic fabric of the mansion building and the carriage house in keeping with

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the Preservation Law, the Applicant will also restore and preserve the residential use for which the Subject Property was originally designed.

- f. ***Uses of Special Value to the Neighborhood or the District as a Whole.*** The conversion of the Subject Property from an institutional use to a residential use is of special value to the neighborhood. Early in the planning process, the Applicant solicited the input of the community as to the preferred use for the site. As a result, the Applicant has determined to proceed with the small scale residential project outlined in the PUD. The community representatives preferred the single building development to either a matter of right townhouse-style development or continuation of an institutional use on the site. The Project will ensure the future residential use of the Subject Property rather than continuation of a more intense school or similar institutional use.
- g. ***Other Public Benefits and Project Amenities.*** As an additional benefit/amenity to the community, the Applicant has committed to make the following contributions totaling \$90,000:
- (1) The Applicant will contribute to Friends of Mitchell Park, Inc. the sum of \$75,000.00 to be used solely for the following purposes: (a) \$50,000.00, to be devoted exclusively to the purchase of six circular teak benches and two circular teak tree benches for installation in Mitchell Park (within the ANC 2D district), plus necessary modifications to the standard sizes of these benches in order to fit the designated spaces in the park, as well as costs for shipping and delivery of the benches; and (b) \$25,000.00, to be devoted exclusively toward the purchase of a safety surface for the playground area, in lieu of the standard mulch surface that is typically used by the Department of Parks and Recreation. This grant will facilitate a matching grant of \$25,000.00 from the Interior Department for this safety surface. The two funds together will cover almost 100% of the cost of the safety surface for the playground area.
 - (2) The Applicant will grant \$15,000.00 to the Sheridan-Kalorama Call Box Restoration Committee to be used to identify, protect, renovate and reuse the District's fire and police call boxes within the ANC 2D district. The Committee will retain an artist to install art work on the exterior of the call boxes, together with historic documentation, to convey a sense of the history of the Sheridan-Kalorama community.

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30. The Project is consistent with many of the Comprehensive Plan's major themes. The Project is consistent with the Generalized Land Use Map, which designates the Subject Property for moderate-density residential uses. The conversion of a former school into a multi-family residential development will stabilize the residential use in this neighborhood. It will provide additional housing opportunities at an appropriate size, scale and location, while preserving and rehabilitating two "contributing" buildings in the Sheridan-Kalorama Historic District.
31. The Project is also consistent with many of the Comprehensive Plan's major elements, as follows:
- a. *Economic Development Element.* According to the Economic Development Element, the District places a high priority on 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). The proposed development will provide high-quality residential development in an area that is within short walking distance of both the Dupont Circle and Woodley Park Metrorail Stations. The proposed development will also serve to attract and retain residents, which will further increase the tax base and create revenue for the District of Columbia.
 - b. *Housing Element.* Housing in the District is viewed as a key part of a total urban living system that includes access to transportation and shopping centers, the availability of employment and training, neighborhood schools, libraries, recreational facilities, playgrounds, and other public amenities. 10 DCMR §300.4. The Subject Property supports the housing goals of the Comprehensive Plan and furthers the total urban living system of the District through its proximity to Metrorail and its provision of attractive in-town urban residential units.
 - c. *Transportation Element.* A basic philosophy of the District's Transportation Element is to provide for the efficient movement of people and goods within the District and its metropolitan area. 10 DCMR §500.2. The policies established in support of the general transportation objectives include supporting land use arrangements that simplify and economize transportation services. 10 DCMR §502.1(a). The location of the Project in close proximity to the Dupont Circle and Woodley Park/Zoo/Adams Morgan Metrorail Stations furthers this goal. The Project also supports the District's goal of adequate parking through its provision of eight (8) on-site parking spaces for up to six residential units. The parking is provided in the existing carriage house and on a parking pad to the rear of the site, both of which are accessed from the public alley.

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- d. *Urban Design Element.* The Project will be developed consistent with the surrounding historic residential neighborhood in terms of materials, height, scale and massing. 10 DCMR § 708.2. The Project's massing and scale are sensitive to the established patterns of development in the area. 10 DCMR §710.2(e).
 - e. *Land Use Element.* The Land Use Element encourages a substantial amount of new housing primarily in housing opportunity areas and near Metrorail Stations, in order for the District to perform its role as the region's urban center providing the greatest density of jobs and housing. 10 DCMR § 1100.2(b). The Site furthers this goal due to its proximity to the Dupont Circle and Woodley Park/Zoo/Adams Morgan Metrorail Stations.
32. The Project also fulfills and furthers the specific objectives of the Comprehensive Plan for Ward 2, as follows:
- a. *Ward 2 Economic Development Element.* The proposed development creates additional residential opportunities in the ward while increasing income and property tax revenues, thereby enhancing the image of the ward as a place to do business and reside.
 - b. *Ward 2 Housing Element.* The proposed development creates additional housing that will enhance the residential neighborhood and neighborhood-level retail and service uses that will support the residents, consistent with the Ward 2 housing goals.
 - c. *Ward 2 Transportation Element.* The proposed development's provision of at least one parking space for each residential unit will help alleviate parking problems within the ward due to the lack of adequate street parking for residents.
 - d. *Ward 2 Urban Design Element.* The proposed development has been designed to enhance the physical character of the area and complement the materials, height, scale and massing of the surrounding neighborhood.
 - e. *Ward 2 Residential Land Use Element.* The Project supports the Residential Land Use Element by establishing a new residential use that will significantly enhance the character of the existing historic residential neighborhood.

Office of Planning Report

33. By report dated October 6, 2003, and through testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the Applications. The OP determined that the Applications are not inconsistent with the Comprehensive Plan, will maintain housing within the neighborhood and will bring needed housing to the District.

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- The proposed rezoning will promote a sound land use pattern in the area and enable the rehabilitation of a contributing building to the Sheridan-Kalorama Historic District.
34. The OP noted that the Subject Property is identified on the Comprehensive Plan Generalized Land Use Map for moderate-density residential use, which is typically accompanied by R-3, R-4, and R-5-B zoning. The OP further noted that the minimum lot area required for a PUD in the R-5-B District is one-half acre (21,780 square feet). Because the Subject Property consists of 16,500 square feet, it would be eligible for a PUD in the R-5-D District, which is defined as medium-high density rather than moderate density. Density permitted for PUDs within the moderate-density zones range from 0.6 FAR in the R-3 District to 3.0 FAR in the R-5-B District. The density proposed for the Project (1.31 FAR) is well within the range of permitted density for the moderate-density land use category of the Comprehensive Plan.
 35. The OP acknowledged that it had been contacted by interested residents of the Sheridan-Kalorama neighborhood, who indicated their strong preference for residential use of the Subject Property, rather than for diplomatic or other institutional use.
 36. In its October 6, 2003 report, the OP recommended that the Commission approve the Applications with the condition that the Applicant work with ANC 2D to determine the specific dispersal of the \$90,000 benefit funds.
 37. The Commission concurs with the report of the OP. As further stated below, the Commission finds the Applicant and the ANC are working together to determine the specific dispersal of the benefit funds.

ANC 2D

38. By letters dated July 20, 2003 and October 14, 2003, and through testimony at the Public Hearing from Single Member District 2D-02 Representative and ANC Vice Chair and Treasurer Mary Eva Candon, ANC 2D indicated its support for the Applications.
39. In its July 20, 2003 letter, the ANC indicated that the Project had been considered at the ANC's regularly-scheduled monthly public meeting held June 9, 2003, wherein a quorum was present. At that meeting, the ANC reviewed the height, scale and massing of the New Building and found that the Project represents a wise use of the vacant building and lot, and that the impact of the Project on city services and facilities would be acceptable. The ANC further determined that the specific benefits and amenities of the Project are superior and will benefit the surrounding neighborhood and the general public to a significantly greater extent than would likely result from development or re-use of the site for matter of right use. For all these reasons, the ANC determined that the Project will add to the attractiveness, convenience, and comfort of the Project occupants and the immediate neighbors, and the ANC recommended that the Commission approve the Applications.

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40. By its letter dated October 6, 2003, the ANC expressed its particular support and preference for the public benefit package offered by the Applicant, namely the establishment of a \$90,000 fund to be disbursed to a community project or projects identified by the ANC after adequate community input and discussion.
41. After the Commission's public meeting, ANC 2D accelerated the process to solicit, collect and evaluate applications for funding from community groups and make recommendations to the Applicant. After evaluating the ANC recommendations, the Applicant determined to contribute \$75,000.00 to Friends of Mitchell Park, Inc. and \$15,000.00 to the Sheridan-Kalorama Call Box Restoration Committee, as described in paragraph 29(g) above.

Development Flexibility

42. Subsection 2405.7 of the Zoning Regulations provides, "notwithstanding the other prerogatives of the Commission in approving uses in PUDs, the Commission shall reserve the option to approve any use that is permitted as a special exception and that would otherwise require the approval of the Board of Zoning Adjustment. Further, §2405.8 of the Zoning Regulations provides, "Approval of the Board shall not be required for any such use approved by the Commission under §2405.7, and the Commission shall not be required to apply the special exception standards normally applied by the Board." Accordingly, the Applicant requests the Commission's approval of certain project features pursuant to 11 DCMR §2405.7, namely:
 - a. Approval of multiple buildings on a single record lot, pursuant to §2516.1 of the Regulations;
 - b. Approval to provide a penthouse structure not satisfying the setback requirements from the east side of the New Building (§§ 400.7 and 411.11);
 - c. Approval of existing mansion building not satisfying the side yard requirements on the east side in accordance with § 405.3 of the Zoning Regulations³; and

³ The Applicant did not include zoning relief from the side yard requirements among the zoning flexibility sought. During the proceedings, the Applicant explained the omission by contending that the mansion is a row dwelling that does not require a side yard under the Regulations. However, the Commission disagrees. The Commission finds that the mansion is a semi-detached dwelling, with a lot line wall at its eastern side. As such, the Commission finds that the mansion is subject to the side-yard requirements contained in § 405.3 of the Regulations. Section 405.3 plainly requires a side-yard unless the semi-detached dwelling shares a common division wall with an existing building. The Commission is mindful of the Board of Zoning Adjustment's (BZA's) contrary decision in the Appeal of Southeast Citizens for Smart Development, 50 DCR 810 (September 26, 2003). In that case, the BZA determined that a side yard was not required where one side of a semi-detached dwelling was situated on the lot line next to an existing building, but was not actually attached to

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- d. Approval of mansion and new apartment building with non-complying projections of bays and porches in the space between the two buildings (§§ 405.3 and 2502).
43. The Zoning Commission finds that rezoning the Subject Property is consistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, Section 6-641.01 of the D.C. Code as follows:
- a. The proposed zone is not inconsistent with the Comprehensive Plan;
 - b. The proposed zone will not produce objectionable traffic conditions; and
 - c. The proposed rezoning will not lead to the overcrowding of land.

CONCLUSIONS OF LAW AND OPINION

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 a 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 Commission has the authority to consider these applications 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, density, lot occupancy, parking and loading, or for yards and courts. The 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 Project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage 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 Project meets the minimum area requirements of §2401.1 of the Zoning Regulations.

the building. The Commission believes that the BZA may have placed too much emphasis on the definition of "Dwelling, one family, semi-detached", which includes within its text a description of a dwelling "one side of which is . . . a lot line wall."

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5. The Project is within the applicable height, bulk and density standards of the Zoning Regulations. The Project involves the creative utilization of space and superior architectural design in providing much needed additional urban residential use. 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 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.
7. The Project's benefits and amenities are a reasonable trade-off for the zoning flexibility requested on the site. The Project responds to both the historic building and the surrounding residential use.
8. In evaluating the Project according to the standards set forth in 11 DCMR §2403, the Zoning Commission concludes that the Applications qualify for approval. Judging, balancing and reconciling the relative value of amenities and benefits in the Applications against the nature of the Applicant's request and any potential adverse effects, the Commission is persuaded that the proposed public benefit herein, in conjunction with the amenities discussed above, are appropriate in this case.
9. Approval of this Project is appropriate because the proposed development is consistent with the present character of the area.
10. Approval of this Project and change of zoning is not inconsistent with the Comprehensive Plan.
11. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2001) to give "great weight" to the affected ANC's recommendations. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.
12. 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.
13. The Applications for a PUD and map amendment are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

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DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review of a Planned Unit Development and for a Zoning Map amendment from R-3 to R-5-D for the property located at 2126 Wyoming Avenue, NW (Square 2528, Lot 911). This approval is subject to the following conditions:

1. The Project shall be developed in accordance with the plans prepared by Wnuk Spurlock Architects, and submitted to the Commission with the Applicant's October 10, 2003 post-hearing submission, located at Exhibit 37 of the Official Record, as modified by the guidelines, conditions and standards herein.
2. The Project shall be a multi-family residential development consisting of approximately 21,615 square feet of gross floor area.
3. Building materials for the Project shall be provided consistent with the samples provided to the Commission as part of the Applicant's October 30, 2003 post-hearing submission, at Exhibit 37 in the Official Record.
4. Landscaping for the Project shall provided consistent with the Landscape Plan provided as Drawing A-10(c) of the revised drawings submitted as part of the Applicant's October 30, 2003 post-hearing submission, at Exhibit 37 in the Official Record.
5. The Applicant will contribute to Friends of Mitchell Park, Inc. the sum of \$75,000.00 to be used solely for the following purposes: (a) \$50,000.00, to be devoted exclusively to the purchase of six circular teak benches and two circular teak tree benches for installation in Mitchell Park (within the ANC 2D district), plus necessary modifications to the standard sizes of these benches in order to fit the designated spaces in the park, as well as costs for shipping and delivery of the benches; and (b) \$25,000.00, to be devoted exclusively toward the purchase of a safety surface for the playground area, in lieu of the standard mulch surface that is typically used by the Department of Parks and Recreation. This grant will facilitate a matching grant of \$25,000.00 from the Interior Department for this safety surface. The two funds together will cover almost 100% of the cost of the safety surface for the playground area. The Applicant will also contribute \$15,000.00 to the Sheridan-Kalorama Cali Box Restoration Committee to be used to identify, protect, renovate and reuse the District's fire and police call boxes within the ANC 2D district. The Committee will retain an artist to install art work on the exterior of the call boxes, together with historic documentation, to convey a sense of the history of the Sheridan-Kalorama community. The public benefits detailed above shall be funded upon recordation of the PUD Covenant and issuance of the building permit for the Project. Evidence of the funding shall be submitted to the record in this case within ten (10) days

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- of issuance of the building permit. Said funds shall be totally expended by December 31, 2004.
6. The Applicant shall have flexibility with the design of the Project in the following areas:
 - a. To vary the location and design of all interior components provided no change is made to the exterior configuration of the Project, and that there are no more than two units in the mansion and no more than four units in the New Building;
 - b. To combine the two proposed units in the mansion into a single unit, based upon market demand;
 - c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on commercial availability at time of construction;
 - d. To make minor refinements to exterior details and dimensions to comply with District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
 - e. To vary the final design, exterior features, details and material of the Project to comply with the requirements of the final HPRB approval; and
 - f. To vary the final selection of the landscaping materials to provide equivalent plant material dependent upon market availability.
 7. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the Land Records of the District of Columbia, between the property owner and the District of Columbia, that is satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA) (the "PUD Covenant"). Such PUD 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.
 8. 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.
 9. The PUD approved by the Zoning Commission shall be valid for a period of two 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.

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10. 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.

On November 12, 2003, the Zoning Commission approved the Applications by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Peter G. May, and John G. Parsons to approve; James H. Hannaham not present, not voting).

The order was adopted by the Zoning Commission at its public meeting on December 8, 2003, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Peter G. May, and John G. Parsons to approve).

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 _____.