

Office of the Chief Financial Officer
Office of Tax and Revenue

NOTICE REGARDING ELECTRONIC FILING REQUIREMENTS

**Requirement to File Certain Monthly Sales and Use Tax Returns and
To Make Sales and Use Tax Payments Electronically**

Pursuant to Section 47-4402(c) of the DC Official Code, the Office of Tax and Revenue (OTR) has published regulations that require certain business taxpayers to file and pay taxes electronically if the amount of the payment due for a tax period exceeds \$25,000. See *DC Register*, April 11, 2003.

The District has set a goal to increase electronic tax filing and payment. This effort began in June 2003 with monthly Employer Withholding Tax returns. We will now phase in monthly Sales and Use Tax returns. Beginning with the February, 2004 tax period, for taxes due March 20, 2004, all business taxpayers filing *monthly Sales and Use Tax returns*, with required monthly payments of more than **\$25,000 must file and pay** electronically. This applies to business taxpayers and third-party filers in and outside the District.

OTR will identify current taxpayers who must file and pay electronically. These taxpayers will be sent a notice of the electronic filing requirement. The notice will explain how to register for electronic filing and payment. Effective with the February 2004 tax period, designated taxpayers will be asked to begin making monthly Sales and Use payments by (1) ACH Credit or (2) ACH debit.

To pay by ACH Credit, read the specifications in the *ACH Credit Guide* posted at http://www.taxpayerservicecenter.com/ACHCredit_Information.pdf.

To pay by ACH Debit, register for OTR's Electronic Taxpayer Service Center (eTSC). Download the registration form at <http://www.taxpayerservicecenter.com/GetStarted.jsp> and mail it to the address indicated, attn: "eTSC Registration" or fax it to 202-442-6388. OTR will send you a *User ID* and *Password* that will give you 24-hour access to the eTSC site. You can view your accounts, file monthly Sales and Use returns, and make monthly payments.

The regulations in 9 DCMR 105 set penalties for failure to file and pay electronically. These penalties will apply to taxpayers who are notified that they must file and pay electronically and who fail to do so.

If you have technical questions about this requirement or electronic access, please contact George Conly, Acting E-Commerce Manager, OTR-ISA, at (202) 442-6371. If you have a legal question about this requirement, contact William Bowie, Attorney-Advisor, OTR-OGC, at (202) 442-6512.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

PUBLIC MEETING NOTICE

Changed Date for the Water and Sewer Authority Board of Directors'
Meeting for the Month of February 2004

THE BOARD OF DIRECTORS FOR THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY HEREBY GIVES NOTICE THAT THE BOARD MEETING ORIGINALLY SCHEDULED FOR THURSDAY FEBRUARY 5, 2004, HAS BEEN CHANGED TO TUESDAY FEBRUARY 3, 2004.

Meeting Notice

85th Meeting of the Board of Directors

Tuesday, February 3, 2004

9:30 a.m.

(Changed from February 5, 2004)

**Central Operations Facility
Blue Plains
Room 407
5000 Overlook Ave. S.W.,
Washington, D.C. 20032**

For additional information contact:

Linda Manley, Board Secretary on 202-787-2330 (email: Imanley@dcwasa.com) or
Debra Mathis, Executive Assistant on 202-787-2331, dmathis@dcwasa.com

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

Application No. 15708-A of the National Broadcasting Corporation, pursuant to 11 DCMR 3108.1, for a special exception under Section 211 to modify a condition of the Board's previous Order No. 13554 to continue to operate a commercial broadcasting tower in an R-1-B District at premises 4001 Nebraska Avenue, N.W. (Square 1722, Lot 1).

HEARING DATES: September 23, 1992 and December 16, 1992

DECISION DATES: January 6, 1993, February 3, 1993, October 7, 2003

PROPOSED DECISION AND ORDER ON REMAND

Beginning in 1955, the Board of Zoning Adjustment (the Board) granted permission to the National Broadcasting Corporation (NBC) to operate a broadcast studio office building with an antenna tower and parking. After the initial 1955 approval, NBC filed a series of applications with the Board and was granted permission to make various changes at the site, including permission to replace the original antenna tower with a new one. NBC constructed a new tower in 1988 but also continued to use the original tower. In 1992, NBC applied to the Board for special exception approval to continue the use of the original 1955 tower.

The Board held public hearings on the application and voted in February 1993 to grant the special exception. However, the Board did not issue its written decision until December 1994, by which time three of the four-member majority had been out of office for over a year because their terms had expired. An appeal was brought to the District of Columbia Court of Appeals based in part on this procedural defect. The Board then requested the Court to remand the case so its current Board members could consider NBC's application on the merits. The Court granted the Board's motion and issued an order remanding the application to the Board for further proceedings. The present members of the Board have reviewed the entire administrative record, including the public hearing transcripts. Based upon its review of the record, the Board adopts the substance of the previous decision and order, as set forth below. This decision and order is based solely upon the record as it existed on December 16, 1992, the date upon which the record was closed.

Government Report Submissions

Office of Planning (OP) Report. OP recommended approval of this application, concluding that the applicant met the requisite burden of proof under Section 211 of the Zoning Regulations. The report concluded that the tower is necessary to adequately serve the needs of the applicant and the community and that it would not adversely impact the

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neighborhood. The report analyzed the history of the tower and other approvals by the Board and recognized that a number of technological changes have taken place that make it necessary for the applicant to continue using the smaller tower.¹ These changes include the District of Columbia Police Department usage as well as other future needs such as the high definition television requirement of the Federal Communications Commission. OP pointed out that the site is large and surrounded by institutional uses and noted the deep set backs for the antenna.

National Park Service Report The National Park Service recommended that the application be denied, contending that the 1955 tower, painted orange and white, would adversely impact Glover-Archbold Park and other parks and vistas throughout the District of Columbia. The principal objection of the Park Service was its understanding that a new tower would "replace" the older tower. The Park Service recommended that all of the devices on the tower should be painted black to match the color on the present black tower. In response, the applicant proffered that it would: (a) repaint the lower tower as necessary using a paint that would blend with the skyline and would be subject to FAA and FCC approval, and (b) dedicate a permanent scenic easement to the Park Service for a portion of the site.

ANC Reports

Advisory Neighborhood Commission (ANC) 3E ANC 3E supported the requested special exception, noting the following: The preexisting lower antenna is adjacent to the newer and taller antenna, both of which are substantially set back from all property lot lines. The applicant and its representatives have been good neighbors making positive contributions to the community in many areas. No complaints concerning the operation of the station or the antenna towers have been received. No evidence suggests that the continuation of the tower would intensify in any way the existing operation of the station either as to the number of people or amount of traffic, pedestrian or vehicular. The applicant's representatives represented that they will continue to provide a close liaison with the ANC. The subject grounds are carefully maintained and screened from surrounding property. The subject tower is reasonably necessary for the satisfactory and economic transmission and maintenance of the facility. The preexisting antenna tower serves the District of Columbia police and other important users. It appears that the newer antenna tower could not structurally support the antennas that are used on the lower tower. Interruption of service would have a severe and adverse impact on the facility.

Advisory Neighborhood Commission (ANC) 3C ANC-3C opposed the special exception, noting the following: The case should be considered as a variance rather than as a special

¹ Many of the findings of fact in this decision are based upon the state of technology as it existed in 1992 when the administrative record was closed. Obviously, much has changed since then.

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exception. The tower is unnecessary for NBC's operations. The tower intensifies the commercialization of NBC's site. The potential health hazards must be weighed against the necessity for the additional antennas. The tower is visually obtrusive. The tower, with its many additional antennas, will increase radio interference problems experienced by neighboring property users. There is nothing about the site that constitutes an exceptional situation, creating a hardship, that warrants relief. The tower is inconsistent with the zoning regulations applicable to the area, and would adversely affect the use of neighboring property.

FINDINGS OF FACT

The Property

1. The property is located on the east side of Nebraska Avenue between Massachusetts Avenue to the south and Upton Street to the north, and is known as premises 4001 Nebraska Avenue, N.W. It is zoned R-1-B.
2. The site consists of 315,810 square feet or 7.25 acres in land area. It has 60 feet of street frontage on Nebraska Avenue. The site is shaped somewhat like a baseball diamond. Vehicular access for the site is from a 310-foot long driveway from Nebraska Avenue. There is a 222-car parking lot on the site. An additional 144 spaces are provided on the adjacent site of the National Presbyterian Church. The site is developed with a two-story brick structure and a radio tower. A ground floor plus two-story addition is currently being constructed on the site. The existing structure totals approximately 124,000 square feet of floor area.
3. To the south of the subject site is the U.S. Naval Security Station with its communication facilities, including a large antenna and other miscellaneous structures close to Glover-Archbold Park. To the north of the site is the National Presbyterian Church headquarters and school facilities. The site is located in an R-1-B District. To the east of the site is Glover-Archbold Park followed by property in the C-3-A District and the McLean Gardens residential development in the R-5-A District fronting on Wisconsin Avenue.

Pertinent Zoning History

4. The Board first granted a use variance to NBC to establish an office building, and special exceptions to establish an office building with parking and a broadcast studio with tower (Appeal No. 4159, public hearing June 1, 1955). Later, following a change in the Zoning Regulations, the Board granted a use variance to permit continuation and enlargement of accessory parking facilities (Appeal No. 5494).

5. In BZA Appeal No. 8234, dated June 16, 1965, the Board granted a use variance to permit an addition to the office building established under Appeal No. 4159. The existing building then contained 91,370 square feet and the addition provided an additional 16,280 square feet.
6. In Appeal No. 10120, dated November 16, 1979, the Board granted the applicant a use variance to permit a second floor addition to the addition permitted under Appeal No. 8234. That addition would have contained a floor area of approximately 8,140 square feet. However, the second floor addition was not constructed at that time and the Board approval for it expired.
7. In Appeal No. 12011, the Board reinstated Order No. 10120 and also granted permission to locate a temporary office structure at the property during the period of construction of the proposed second floor addition. To alleviate its continuing space concerns, NBC sought and obtained a two year extension of time for the temporary office structure (BZA Order No. 12539, dated March 7, 1978).
8. In Application No. 13222 dated July 28, 1980, the Board granted the applicant a use variance to permit a ground floor plus two-story addition to the existing structure. As a condition of approval and prerequisite to future zoning relief, the applicant was required to submit a proposed "master plan" for future development of the site.
9. NBC presented a proposed master plan to the Board with Application No. 13554 in which it sought approval for additions to the broadcast studio and office building, including a new antenna tower.
10. On November 25, 1981, the Board approved the additions and master plan, subject to the following conditions:
 - a. The additions shall be phased and constructed in accordance with the master plan marked as Exhibit No. 10 of the record.
 - b. The applicant shall secure the approval of the Director of the National Capital Region of the National Park Service for the proposed storm water drainage into Glover-Archibold Park.
11. The Board's opinion, reflecting the proposed master plan, noted that, in the future, a new larger tower structure would be installed on top of a parking garage or deck to improve broadcast range and capacity, and the larger tower would "replace" the existing 1955 tower.

12. The new larger tower was constructed in 1988 in the general location approved by the master plan, but the 1955 tower was never removed. The garage or parking deck upon which the 1988 tower was to have been constructed was never erected because NBC obtained additional parking at the nearby National Presbyterian Church and its adjoining parking lot.
13. The 1988 tower was built, instead, on an equilateral triangular base, having footing separation of 60 feet instead of the approved 90 feet. The 1955 tower and the 1988 tower combined have a bulk of approximately 50 percent of the bulk approved for the larger antenna set forth in the master plan.
14. By letter dated February 25, 1992, the Zoning Administrator notified the applicant that under BZA Order No. 13554, the 1955 tower was to have been replaced by the 1988 tower. The Zoning Administrator advised the applicant to either remove the 1955 tower or seek special exception approval allowing it to remain. The applicant filed this application seeking modification of the previous master plan approval to permit the continued use of the 1955 tower.

The Special Exception Application

15. The two antenna towers are set back from the lot lines to conform to the Zoning Regulations, and are set back a distance of approximately 600 feet from Nebraska Avenue and approximately 200 feet from Glover-Archbold Park. The 1955 tower has an approximate height of 459 feet, a height which is 200 feet lower than the 1988 antenna tower. This height was approved by the District government during the 1955 permit process under the Act to Regulate the Height of Buildings in the District of Columbia (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 through 6-601.09). During prior proceedings the Board found this height to be reasonably necessary to render satisfactory service, and this Board adopts that particular finding based upon testimony by the applicant. The 1955 tower is approximately 30 feet from the 1988 tower at the closest point. Each part of the ground mounted antenna tower is set back a minimum of 10 feet from each lot line or a distance of at least 1/6 of the antenna height. The 1955 tower is not located within close proximity to the neighboring residential properties.
16. The 1955 tower has a minimal impact on the neighborhood from a visual standpoint. The 1955 tower is in a location which minimizes, to the greatest practical degree, its visibility from neighboring properties by virtue of its proximity to the newer tower and its main building. Set backs are provided from all property lines substantially more than is required under the Regulations. The site has been extensively landscaped and the visibility of the 1955 tower has been minimized. The visual obtrusiveness of the two towers together represents a minor skyline protrusion and the height of both towers is much less than permitted under

the Board's previous master plan approval. The 1955 tower is set back from residential areas at substantial distance and is visually shielded by distance, existing vegetation and the existing larger tower.

17. Continuation of the 1955 tower will not result in adverse impacts to the community with respect to increased density or traffic. The commercialization of the site will not be increased by a continuation of the 1955 tower and will not result in an increase in office space, number of employees, vehicular and pedestrian traffic or the establishment of other commercial uses on the site. The Board also finds that the continued use of the antenna tower will not increase existing radio interference problems, if any.
18. Continuation of the 1955 tower will not result in adverse impacts on the neighborhood stemming from the electromagnetic effects of the tower. Antennas located on the tower are licensed by the Federal Communications Commission, and the applicant has complied with all requirements of the Federal Communications Commission regarding safety of radio frequency broadcasts. In addition, the Board adopts the finding proffered by the applicant's expert engineer; i.e.: that the electromagnetic frequency is within recommended industry guidelines. The American National Standard Institutes recommended standard for impact is 1,000 microwaves per square centimeter (UM/CM²). The applicant's engineering consultant, Smith and Powstenko, noted that the maximum ground level power intensity from the main WRC/TV facility is .0014 MW/CM² which would fall at a location 69 meters from the tower base. This ground level power was likened to something less than would occur with a child's walkie-talkie transmitter.
19. With respect to the alleged health hazards stemming from the electromagnetic frequencies, the Board is not persuaded by the evidence or arguments presented by the opposition. While the record contains articles concerning the purported hazards of electromagnetic frequencies, the claims within these articles were neither persuasive nor applicable to either of the towers in this case. The Board is more persuaded by the applicant's testimony that the power generation on the site is negligible, representing a minute portion of that which is allowed under applicable laws.
20. The Board is persuaded that the continuance of the 1955 tower along with the new tower is consistent with the intent of the original master plan and the approval based upon the master plan should therefore be modified to permit its continuation. The combined volume or bulk of the two towers is well within the approved envelope of the master plan. The purpose of the 1981 master plan was to plan for the future needs and probable physical development for the NBC facility. The master plan set forth the basic design and scope of three phases of contiguous

physical expansion. The 1955 tower covered an area of 390 square feet and had a volume of 59,670 cubic feet. The 1988 tower covered an area of 1,560 square feet with a volume of 342,680 cubic feet. The master plan, on the other hand, provided for a tower that would be 3,510 square feet in coverage and would have a volume of 771,030 cubic feet. Thus, the master plan envelope for the tower was almost twice as large as the combined area and volume of the two existing antenna towers.

21. The Board is persuaded that continuation of the 1955 tower would actually result in less impact on the surrounding neighborhood than if the master plan tower were constructed. The master plan tower would have larger structural members, 18 inches to 24 inches in width, and would be closer to Glover-Archbold Park than the other two towers. In addition, the master plan tower would have greater load bearing capacity, most likely resulting in larger and more antennas than the 1955 tower.
22. The Board credits the applicant's testimony that a continuation the 1955 antenna is critically needed for NBC's operational and economic viability. Space for antennae and antenna towers is in high demand, particularly in this area of the District. The 1955 tower is used by several providers of news programs throughout the area, the nation, and the world. As recognized in the master plan and by the Board in previous orders, NBC needs the flexibility to meet unanticipated changes in technology that require additional antenna space. The space on the 1955 tower is occupied by antennae which are critical to the operation of the TV station. These antenna include receiver microwave links from the Clock Tower at 12th Street and Pennsylvania Avenue that enable NBC-WRC to receive pictures and sound from the Mall area and the District Building. These links also allow the station to receive important news breaks and items from the White House. Additionally, there are two microwave links from the State Department, including the Channon Building and a microwave link from Capitol Hill. Of particular importance are four antennae housed on the small tower serving the District of Columbia police department. There are other antennae used by various service providers, including private two-way uses for security and other endeavors. Interruption of service would adversely affect the NBC/WRC facility.

CONCLUSIONS OF LAW

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code § 6-641.07(g)(2) (2001), to grant special exceptions as provided in the Zoning Regulations. The applicant applied under 11 DCMR § 3104.1 for a special exception pursuant to 11 DCMR § 211 to permit the continued use of the 1955 tower at its broadcast studio facility.

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

The applicant has established that the continuation of the 1955 antenna tower is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The broadcast facility and tower has been operating at the site since 1955 and has been subject to periodic special exception reviews since that time. During this time period the tower has been compatible with the surrounding neighborhood, and there is no evidence to suggest that it would be incompatible with the neighborhood in the future (Findings of Fact 14-21). Likewise, the tower has not adversely affected the use of neighboring properties in the past; and, there is no evidence to suggest that its continued use would adversely effect the neighborhood in the future (Findings of Fact 14-21).

Under Section 211.1 of the Zoning Regulations, the Board may permit the use of commercial broadcast antenna subject to the following provisions:

The proposed location, height, and other characteristics of the antenna shall not adversely affect the use of neighboring property. Because the 1955 tower is set back from lot lines substantially more than required under the Zoning Regulations and is also set back from neighboring residential properties, its location does not adversely affect the use of neighboring properties. The height of the 1955 tower, only 459 feet, is 200 feet less than the approved 1988 tower and less than the master plan tower previously approved by the Board. The comparatively low height of the existing tower will have no impact on the use of neighboring property (See, Findings of Fact 14-15).

The antenna shall be mounted in a location that minimizes to the greatest practical degree its visibility from neighboring property and from adjacent public space, or that is appropriately screened by landscaping or other techniques so as to soften or minimize the visibility of the antenna. Because of the generous setbacks and the landscaping at the site, visibility of the tower is minimized (See, Findings of Fact 14-15). Provided the orange and white tower is repainted to "soften" its visual impact, the Board concludes that this condition will be satisfied.

Each part of a ground-mounted commercial broadcast antenna, including support system and guy wires, shall be removed a minimum of ten feet (10 ft.) from each lot line or at a distance of at least one-sixth of the mounted height of the antenna, whichever is greater. This condition is met (See, Finding of Fact 14).

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The proposed height of the tower shall not exceed that which is reasonably necessary to render satisfactory service to all parts of its service area. This condition is met (See, Findings of Fact 14 and 20).

No transmission equipment shall be located in a Residence District, unless location in the district is necessary for technically satisfactory and reasonably economical transmission. The 1955 tower is not only necessary for technically satisfactory and economic transmission; it is critically needed for NBC's operational and economic viability (See, Finding of Fact 21).

If review by the Historic Preservation Review Board or Commission of Fine Arts is required, concept review and approval shall occur before review by the Board of Zoning Adjustment. This review is not required. Therefore, this condition is inapplicable.

No height of an antenna tower in excess of that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 through 5-409 (1994 Repl. & 1999 Supp.))), shall be permitted, unless the height is approved by the Mayor. The height of the 1955 tower was approved by the District government² during the 1955 permit process (See, Finding of Fact 14).

Before taking final action on an application for use as an antenna tower, the Board shall submit the application to the D.C. Office of Planning for review and report. The Office of Planning (OP) reviewed the application and submitted a report recommending approval.

The applicant shall have the burden of demonstrating the need for the proposed height, and that full compliance with matter-of-right standards would be unduly restrictive, prohibitively costly, or unreasonable. Matter of right standards would permit only one ground mounted antenna not to exceed a height of 12 feet at its highest point (See, Sections 201.2—201.5 of the Zoning Regulations). Since 1955, when the subject tower was first approved and built, the Board has recognized that compliance with the matter-of-right standard would be unduly restrictive and unreasonable. The applicant has not only demonstrated the need for the existing 459 feet tower, it has previously demonstrated the need for towers with a greater height, i.e., the 659 feet 1988 tower, and the proposed master plan tower which was approved for 659 feet but would have appeared taller because it was to have been built atop a parking garage (See, Findings of Fact 4, 10, 14). The Board is persuaded that the applicant has satisfied its burden of demonstrating the continued need for the existing 459 feet tower.

² The District of Columbia did not have a mayor at that time. Height approval was obtained from the Commissioners of the District of Columbia instead.

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For the reasons stated above, the Board concludes that the applicant has satisfied the burden of proof with respect to the application for a special exception under § 211 to allow the continued use of the 1955 tower in a residential zone.

ANC Issues and Concerns

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

In this case, there are two affected ANCs, ANC 3E and ANC 3C. The Board has carefully considered the reports made by each ANC. However, it finds only the report made by ANC 3E to be persuasive. As stated in the Findings of Fact, the Board agrees with ANC 3E that the continued use of the 1955 tower will not adversely impact on the neighborhood and is reasonably necessary to the applicant's operations. Accordingly, the Board gives great weight to ANC3E's recommendation to grant the special exception application.

With respect to the report by ANC 3C, the Board finds that it has not offered persuasive advice. ANC 3C maintains that this application must be evaluated under the criteria for variance relief under Section 3103 of the Zoning Regulations. The ANC is incorrect in this respect. The applicant is seeking special exception relief under Sections 3104 and 211 of the Zoning Regulations, not variance relief. Therefore, the applicant does not have to demonstrate under Section 3103.2 that that the property is affected by an exceptional condition creating a practical difficulty or undue hardship upon the owner. With respect to the ANC's other concerns; i.e. commercialization at the site, health hazards, and visual obtrusiveness, the Board is not persuaded that these issues present a significant problem for the neighborhood (See, Findings of Fact 14-18).

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

Approval shall be until December 1, 2004, as intended by the previous Board at the time it deliberated on this case.

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The applicant shall grant the National Park Service a permanent scenic easement of a portion of the site consistent with Exhibit No. 48 of the record.

The applicant shall repaint the 1955 tower a color subject to the approval of the National Park Service.

The applicant shall establish and maintain a Community Liaison/Advisory Council which shall meet with neighborhood representatives upon the request of Advisory Neighborhood Commissions 3E and 3C. The applicant's General Manager or his/her designee(s) shall provide any relevant information about their operations upon request, including but not limited to information regarding use of the broadcast towers, real property improvements, parking and traffic issues, or community outreach efforts. The applicant shall also provide upon request information regarding its intentions to seek any licenses or approvals required by any agencies of the Federal or District or Columbia governments regarding station operations. The applicant's General Manager shall use his/her best efforts to establish an on-going dialogue with the operators of other broadcast facilities within the boundaries of Advisory Neighborhood Commissions 3E and 3C.

Therefore, for the reasons stated above, it is hereby **ORDERED** that: The motion to approve the special exception is **GRANTED**.

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

The vote was taken on October 7, 2003 to affirm order and send proposed order out for exceptions. The order was sent to all of the parties for exceptions and arguments on November 4, 2003. No exceptions or arguments were received by the established deadline of November 25, 2003. The Board voted at its decision meeting on January 6, 2004, to **ISSUE** this Order by a **VOTE** of **4-0-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, and David A. Zaidain in favor of the motion, John G. Parsons, not present, not voting).

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

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

DATE OF FINAL ORDER: JAN 21 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."

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

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

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

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

Application No. 16597 of Elaine Carrera, pursuant to 11 DCMR § 3103.2, a variance to allow an accessory garage structure in excess of 15 feet and one story in height under section 2500.4, and a use variance to allow the second floor of the accessory structure to be used exclusively as the applicant's living quarters under section 2500.5 in an R-5-A district at premises 623 Mellon Street, S.E. (Square 5984, Lot 37).

HEARING DATE: September 19, 2000, November 13, 2001

DECISION DATE: January 6, 2004

DISMISSAL ORDER

This application was filed with the Office of Zoning (OZ) on May 11, 2000. The application was originally scheduled to be heard by the Board of Zoning Adjustment (Board) on September 19, 2000. The application was found to require additional relief and was amended and rescheduled for hearing on November 13, 2001. This hearing was concluded and the record closed except for specific information requested by the Board from the Office of Planning, parties and the applicant. On November 22, 2001, after consultation with Corporation Counsel, the OZ sent a memorandum to the applicant outlining additional zoning relief needed to fulfill the applicant's development plans and requesting specific information from the applicant. The memorandum also included a recommendation that the applicant consider seeking professional assistance in addressing the aforementioned issues. The OZ contacted the applicant by telephone to ascertain her intentions to proceed with the case. On January 9, 2002, the OZ received a letter from the applicant requesting additional time to provide the information requested by the Board. OZ agreed to give the applicant more time. The OZ has not heard from the applicant since her last correspondence.

Over three years have passed since this application was filed, and over two years since additional information was requested from the applicant. Given the substantial time that has passed, and the applicant's failure to provide the additional information requested after due notice and expiration of a reasonable time, the OZ recommended that the Board dismiss this application for failure to comply with the provisions of the Zoning Regulations under subsection 3100.6.

At the Board's monthly meeting on January 6, 2004, the Office of Zoning reported the aforementioned status of the application and recommended that the Board dismiss the application for failure of the Applicant to comply with the procedural requirements of the Zoning Regulations.

In light of the foregoing, the Board hereby **ORDERS** that the application be **DISMISSED**.

VOTE: 5-0-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, Anthony J. Hood and David A. Zaidain to dismiss the application).

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

Each concurring member has approved the issuance of this Order.

FINAL DATE OF ORDER: JAN 15 2004

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

RSN

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

Application No. 16852-A of Washington Psychoanalytic Society/St. Patrick's Protestant Episcopal Church, pursuant to 11 DCMR § 3104.1 for a special exception to allow a private school under section 206 for a maximum of sixty students, grades seven through nine, and a maximum of 12 faculty and staff in the R-1-B District at premises 4925 MacArthur Blvd., N.W. (Square 1393, Lot 823).

Note: The Applicant, by letter dated November 26, 2003, requested that Order No. 16582 be amended to correctly reflect its two (2) year validity period, instead of six (6) months. On January 6, 2004, at its regularly scheduled public meeting, voted 3-0-2 (Geoffrey H. Griffis, Curtis L. Etherly, Jr. and David A. Zaidain in support of the motion, Anthony J. Hood and Ruthanne G. Miller not hearing the case, not voting) to approve the issuance of this corrected order. Order No. 16852-A, corrects Order No. 16852, by stating that pursuant to 11 DCMR § 3130, the order shall not be valid for more than two years... unless the applicant files with DCRA for the purposes of securing a building permit.

HEARING DATES: April 16, 2002; May 21, 2002; July 2, 2002; July 9, 2002; and October 8, 2002

DECISION DATE: December 3, 2002

CORRECTED DECISION AND ORDER

This application was submitted January 22, 2002 by the owners of the property that is the subject of the application. At the time of filing, the subject property was owned by Washington Psychoanalytic Society, which submitted the application on behalf of St. Patrick's Protestant Episcopal Church, then the contract purchaser of the subject property. St. Patrick's Protestant Episcopal Church ("Applicant") became the fee simple owner of the subject property as of March 22, 2002 and was represented in this proceeding by Shaw Pittman LLP.

Following a public hearing, the Board voted 4-0-1 on December 3, 2002 to approve the application subject to conditions.

PRELIMINARY MATTERS

Application. The application requests a special exception under 11 DCMR § 3104.4 to establish a private school use under section 206 in an R-1-B zone at 4925 MacArthur Blvd., N.W. (Square 1393, Lot 823). The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Hearing. By memoranda dated January 29, 2002, the Office of Zoning sent notice of the application to the Office of Planning, the Zoning Administrator, the Department of Public Works, the Department of Health, the Councilmember for Ward 3, Advisory Neighborhood Commission ("ANC") 3D, and the commissioner for single member district ANC3D05.

The Board scheduled a public hearing on the application for April 16, 2002. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on February 28, 2002, mailed notice of the hearing to the Applicant, ANC 3D, and the owners of all property within 200 feet of the subject property. Subsequent hearing sessions were held on May 21, 2002, July 2, 2002, July 9, 2002, and October 8, 2002. The Applicant's affidavits of posting and maintenance indicate that two zoning posters were placed at the subject property's two street frontages, MacArthur Blvd. and Ashby Street, N.W., beginning on March 29, 2002, in plain view of the public.

Requests for Party Status. ANC 3D was automatically a party in this proceeding. The Board granted party status to (a) Lawrence Skrivseth and Cathy Wright, residents of a dwelling on MacArthur Boulevard adjacent to and immediately south of the subject property; (b) Michael and Meleva Lovendusky, residents of a dwelling on MacArthur Boulevard directly across the street from the subject property; and (c) the Neighbors United Trust, a group of nearby property owners, including some who originally requested party status individually, in opposition to the application. Michael Italiano and Reva Hamilton, residents of the 4900 block of Ashby Street, N.W., requested party status on March 29, 2002, but on April 15, 2002 withdrew their request for party status and their opposition to the application.

Applicant's Case. The Applicant requested a special exception to allow a private school for a maximum of 60 students and 12 faculty and staff in an R-1-B zone at 4925 MacArthur Blvd., N.W. The Applicant presented testimony and evidence from Peter Barrett, Head of School at St. Patrick's Episcopal Day School; Katherine Bradley, Board Chair of St. Patrick's Episcopal Day School; Marty Wells, principal of Wells & Associates, Traffic Consultants, an expert traffic operations engineer; David Konapelsky, an architect with GTM Architects, an expert in architecture, particularly regarding accessibility for the disabled and life-safety systems; and Scott Harvey, an engineer with Polysonics, Inc., Sound Consultants, an expert in sound evaluation and mitigation.

Government Reports. The Office of Planning ("OP") reviewed the application with respect to traffic, parking, noise, number of students, and other potentially objectionable conditions. In reports dated April 9, 2002, April 15, 2002, and November 8, 2002, OP recommended approval of the application subject to several conditions derived from community concerns, the Applicant's proposed operational plans, and recommendations of the District Division of Transportation ("DDOT").

DDOT provided testimony based on its review of the application, meetings and telephone conversations with representatives of the Applicant and ANC 3D, and visits to the Applicant's Whitehaven Parkway campus to observe the morning pick-up routine and traffic conditions. DDOT submitted reports dated April 9, 2002 and May 10, 2002, and provided the testimony of Ken Laden, Administrator for Intermodal Planning, and Rachel MacCleery, Bureau of Traffic Services. DDOT determined that the application would not have adverse traffic or parking impact, provided certain conditions were met by the Applicant.

ANC Report. ANC 3D, at its regularly scheduled meeting held April 3, 2002 with a quorum present, voted 5-0-0 to recommend denial of the requested special exception. The ANC raised

concerns with respect to noise, traffic, number of students, and parking, and concluded that the proposed private school use would be inconsistent with the character of the neighborhood and would not be in harmony with the general purpose and intent of the neighborhood's residential zoning. John Finney, Chair of ANC 3D, testified at the public hearing that noise created by middle school students would erode the calm and tranquility of the neighborhood; that the proposed 60-student limit was objectionable, given that in 1962 the Board refused to permit a school on the same site to expand to 75 students; and that the proposed private school use of the subject property would lower the value of surrounding houses.

Parties in Opposition to the Application. The Neighbors United Trust ("NUT") testified through its representatives Nancy Feldman, Alma Gates, and Catherine Van Sickle DeMallie. NUT also submitted testimony prepared by Jawahar Mehra, P.E., an expert in traffic operations. Michael Lovendusky, Lawrence Skrivseth, and Cathy Wright testified in opposition to the application. Mr. Skrivseth also submitted traffic data that he had compiled. The parties in opposition testified generally that the proposed location was not appropriate for private school use because of adverse traffic, noise, and environmental impacts.

Persons in Support of the Application. The Palisades Citizens Association ("PCA"), the neighborhood association covering the area where the subject property is located, has approximately 1,000 members and has been in existence since 1916. At its general membership meeting on April 2, 2002, the PCA passed a resolution supporting approval of the application by a vote of 124 to 41.

The Board received approximately 175 letters in support of the application, primarily from residents of the Palisades neighborhood and from parents of students at the Applicant's elementary school. In addition, 17 persons testified in support of the application at the public hearing. The persons in support stated generally cited a need for additional middle-school opportunities and asserted that the Applicant's proposal would not adversely affect neighboring properties, because the Applicant had carefully addressed any potential objectionable impacts, but would benefit the neighborhood by preserving the existing building, trees, and green space on the subject property with fewer impacts than some uses permitted as a matter of right at that location, such as the development of three single-family houses.

Persons in Opposition to the Application. The Board received approximately 25 letters in opposition to the application. The letters in opposition asserted generally that the proposed private school use would adversely affect the surrounding residential neighborhood because of traffic, parking, intensity of use, noise, loss of privacy, trash, safety, the possibility that the Applicant might seek to expand the building or the intensity of its use of the site in the future, and a diminishing effect on property values. Ann Gibbons, a resident of the 4900 block of W Street, N.W., testified in opposition at the hearing, stating that the subject property provided inadequate land for the proposed use and that a school in some other residential area would be safer for students and faculty.

FINDINGS OF FACT

The Subject Property

1. The subject property is located at 4925 MacArthur Blvd., N.W. (Square 1393, Lot 823),

in the Palisades neighborhood of Ward 3. The site is located at the corner of MacArthur Blvd. and Ashby Street, N.W., with approximately 150 feet of street frontage on MacArthur Blvd.

2. The site contains approximately 21,000 square feet of land area (0.48 acres) and is improved with a two-and-a-half-story building in the northern half of the lot. The building, built in 1905 as a single-family residence, contains approximately 4,325 square feet of usable space. The remainder of the site is occupied by a parking lot and a large lawn.
3. The Applicant plans a complete rehabilitation of the existing building, including removal of the fire escapes on its eastern and southern sides, renovation of the building interior and conversion to seminar-style classrooms, construction of a second-story addition to an existing porch, and upgrades to the building's handicapped accessibility and life-safety systems. The proposed modifications would preserve the building's residential appearance, with the only change in the footprint of the building made to accommodate the life-safety and handicapped accessibility upgrades, including the provision of code-compliant handicapped restrooms.
4. The Applicant proposes to preserve the existing open green space on the subject property, including existing trees, and to maintain the lawn and plantings as a park-like setting.
5. The subject property contains a parking lot entered from Ashby Street. The Applicant proposes to reconfigure and reconstruct the lot, with a slight increase in the paved area, to maximize the number of spaces in the available area, to provide handicapped parking, and to provide a buffer between the parking lot and the adjacent neighbors.
6. The Applicant has coordinated with the National Park Service in designing a stormwater management system to be installed beneath the parking lot. The stormwater management system is designed to protect the integrity of the existing retaining wall and is expected to significantly reduce or eliminate stormwater run-off from the parking lot onto neighboring properties.
7. The subject property is located in a predominantly residential neighborhood of single-family detached houses. The average lot size in the immediate vicinity of the site is between 7,000 to 8,000 square feet.
8. The subject property is zoned R-1-B. The purposes of the R-1 district include to stabilize and protect quiet residential areas developed with one-family detached dwellings, and to promote a suitable environment for family life. 11 DCMR §§ 200.1-200.2. The R-1-B zone provides for districts of higher density than the R-1-A zone. 11 DCMR § 200.3.
9. The building on the subject property, after modifications planned by the Applicant, would continue to comply with height, lot occupancy, and other area requirements of the R-1-B district.

10. Under the Applicant's proposal, total lot occupancy would be 14.4 percent, where a maximum lot occupancy of 40 percent is permitted. *See* 11 DCMR § 403.2.
11. The minimum lot size in the R-1-B district is 5,000 square feet. 11 DCMR § 401.3. The subject property could potentially be redeveloped with several single-family residences.
12. The building on the subject property has side and rear yards in excess of those required under the Zoning Regulations. The building is 95 feet, 9 inches from the southern property line, where the required minimum is eight feet. *See* 11 DCMR § 405.9. The rear yard is 37 feet deep, where the required minimum is 25 feet. *See* 11 DCMR § 404.1.
13. The side yards of the houses adjacent to the subject property to the south (abutting the side yard of the subject property) and to the east (abutting the rear yard of the subject property) are less than the eight-foot setbacks required under the Zoning Regulations.
14. The subject property has a six-foot board-on-board fence along the property line in the rear yard, between the parking lot and the abutting property to the east.
15. The subject property is higher than the abutting property to the south, with the difference in elevation becoming more pronounced with increasing distance from MacArthur Blvd. toward the back of the lot. A retaining wall separates the subject property from the abutting lot.
16. The abutting property to the south of the subject property has a nonconforming side yard such that the residence on the abutting lot is three feet from the property line. The Applicant pledged to install a wooden fence several feet inside the Applicant's property line, if requested by the owner of the abutting lot, to provide a buffer between the proposed school and the residence on the abutting lot. Due to the large side yard on the subject property, the residence is almost 100 feet from the existing building.
17. The trash dumpster presently at the subject property would be removed and replaced with "supercans" kept in a wood-fenced enclosure to be constructed on the west side of the parking lot, away from the property line and close to the building. Trash pick-up would be handled on a daily basis by the Applicant's cleaning crew in a passenger-type vehicle or van.
18. The Applicant proposes to construct steps in the retaining wall at the front of the building on the MacArthur Blvd. side of the subject property. Students would enter and leave the building by way of these front steps.

The Proposed Private School Use

19. The Applicant began its school operation with a nursery school founded in 1956 at the old St. Patrick's church at Foxhall and Reservoir Roads, N.W. The addition of elementary grades began in 1967, and in 1977, the school moved to its present location at 4700 Whitehaven Parkway, where it currently operates a co-educational school with approximately 440 students, preschool through sixth grade. The Applicant also operates

a middle school for 16 seventh graders in property leased through 2003 at 4880A MacArthur Blvd., N.W., in the C-2-A zone district.

20. The Applicant initially proposed to operate a middle school for a maximum of 60 students, in grades 7 through 9, on the subject property. The proposal was subsequently revised to provide for an initial maximum enrollment of 40 students, automatically increased to a maximum enrollment of 60 students after the first year, provided the Applicant was in compliance with the conditions of approval of its special exception request.
21. The proposed middle school program would operate in seminar-style classes of no more than 12 students. The Applicant stated that the subject property is well-suited for use as a middle school due to its light-filled interior spaces, the intimate size of the classrooms, the green space surrounding the building, and the proximity to the Whitehaven campus.
22. The subject property was previously used, beginning in 1961, as a private school for 25 students, kindergarten through fourth grade, who were children of the diplomatic staff of the German embassy. In 1964 the subject property began use by the Washington Psychoanalytic Society as a post-graduate school for psychiatrists studying psychoanalysis.
23. The maximum number of faculty and staff under the Applicant's proposal would be eight full-time and four part-time.
24. The Applicant proposed several limitations on the use of the subject property intended to minimize the potential for adverse impacts associated with the proposed private school. These measures would limit the hours of school operation, including faculty and staff activities before and after the school day; frequency of evening events at the school; night, weekend, and summer use of the subject property; use of the green space for organized sports or recreational activities; and the scheduling of deliveries to the school. The Applicant also proposed to establish a community liaison program to address community concerns and to monitor enforcement of conditions of approval of the requested special exception.
25. The Office of Planning recommended a maximum enrollment of 40 students, with a 10-year term of approval of the requested special exception.
26. ANC 3D objected to the Applicant's proposed enrollment cap of 60 students as "excessive and likely to create conditions objectionable to nearby neighbors." The ANC's conclusion was based on a 1962 decision by the Board that denied a requested special exception to expand the elementary school for children of German Embassy employees at the subject property from 25 to 75 students. ANC 3D also expressed concern that the Applicant would eventually seek to expand the size of its middle school student body at the subject property.
27. The parties in opposition testified that the subject property, at less than half an acre, is

inherently too small for a junior high school function, and that its size rendered the site incapable of adequately protecting the surrounding purely residential neighborhood from its activities. The parties in opposition also testified that traffic, parking and congestion, noise, privacy intrusions, overuse of off-site athletic and other local public resources, and the generally intensive level of adolescent activity that would be generated by the school use would irreparably disrupt the tranquility of the quiet residential area.

Traffic

28. The subject property fronts onto MacArthur Blvd. at its intersection with Ashby Street. At that location, MacArthur Blvd. is a four-lane, divided road with curbed parking on both sides. The nearest traffic signals are located at the intersections of MacArthur Blvd. with V Street to the south and with Dana Place to the north. The posted speed limit is 25 miles per hour.
29. Ashby Street is a 25-foot-wide local street bordered on both sides by single-family detached houses. Ashby Street is controlled by a stop sign at MacArthur Blvd.
30. Traffic at the intersection of MacArthur Blvd. and Ashby Street operates at an acceptable level of service "A" during both the school morning and afternoon peak hours.
31. A Metrobus stop is located on MacArthur Blvd. in front of the subject property.
32. The Applicant proposed a transportation management plan designed to minimize the traffic impacts created by a private school with an enrollment of 60 students on the subject property. Principal elements of the plan included that students who did not walk to school would arrive and depart using a shuttle bus system between the subject property and the Whitehaven campus, or by parent pick-up and drop-off in carpools with at least three students.
33. Under the shuttle bus system, students would arrive from home in the morning at the Whitehaven campus and ride in shuttle buses to the subject property; in the afternoon the shuttle buses would return the students to the Whitehaven campus to be picked up. The lobby of the gymnasium at the Whitehaven campus would serve as a waiting area in inclement weather. The Applicant projected that two or three shuttle trips would be necessary to transport 60 students.
34. DDOT supported the Applicant's proposal to use the Whitehaven campus as the pickup and dropoff location for shuttle buses to the subject property. According to DDOT, changes proposed by the Applicant at the Whitehaven campus, especially reversing the direction of traffic on the Whitehaven driveway, would both improve current conditions at the Whitehaven campus and absorb the additional traffic generated by the proposed private school use on the subject property.
35. The Applicant's traffic expert testified that the Applicant's proposed drop-off and pick-up arrangement for students would not significantly affect traffic on Whitehaven Parkway or on MacArthur Blvd., and that any delays resulting from traffic stopping for

the school's shuttle buses on MacArthur Blvd. would be similar to those delays currently experienced on MacArthur Blvd. at the existing signalized intersections.

36. DDOT testified that the shuttle buses, in both the morning and afternoon, would have only a minor impact on MacArthur Blvd. traffic. DDOT testified that the relatively short periods that a bus would be stopped on MacArthur Blvd. to drop off or pick up children would likely be no longer than an average stop light cycle.
37. The Applicant proposed a round-trip route for the shuttle bus between the Whitehaven campus and the subject property utilizing Whitehaven Parkway, MacArthur Blvd., Arizona Avenue, Loughboro Road, and Foxhall Road back to Whitehaven Parkway. DDOT supported the proposed route because it would (a) utilize only right-hand turns, which are safer than left-hand turns in buses, (b) utilize larger streets, keeping the buses off smaller neighborhood streets, and (c) avoid the need for a dangerous U-turn on MacArthur Blvd.
38. ANC 3D contended that the shuttle bus system would add to congestion at the Whitehaven campus and was not likely to be enduring or enforceable, so that eventually the proposed private school would increase traffic on Ashby Street and other residential streets such as 49th Street and W Street. ANC 3D also objected that the shuttle buses would cause traffic on MacArthur Blvd. to stop for a considerable period while the buses were stopped to unload or pick up students.
39. A carpool program has been implemented by the Applicant at its Whitehaven campus, under the monitoring of DDOT. According to the Applicant, the person-per-vehicle occupancy average achieved by the carpool program at the Whitehaven campus – approximately 1.8 for the morning drop-off and 1.7 for the evening pick-up – was sufficient to offset any additional traffic resulting from the pick-up and drop-off of middle school students.
40. The Applicant's enrollment contract includes a clause that requires parents of students to comply with all traffic and parking guidelines both at the Whitehaven campus and the subject property.
41. DDOT concluded that full implementation of the Applicant's traffic management plan would mitigate nearly all of the negative traffic impacts that the proposed private school use might otherwise generate. DDOT noted the importance of full implementation of the traffic management plan, and that "some of the most crucial conditions are behavioral ones that will be difficult to monitor and enforce." To help ensure long-term compliance with the conditions, DDOT recommended establishment of a community liaison group that could "head off potential problems before they become problems." DDOT also submitted a "suggested compliance reporting format" for use by the Applicant in monitoring compliance with the proposed conditions of approval and reporting the information to DDOT or other District agency.
42. OP supported the recommendations made by DDOT with respect to traffic impacts.

43. NUT's traffic expert testified that the Applicant's proposed shuttle bus system would be difficult to implement, because the students' parents and guardians "will find it easier and more convenient" to drop off the students at the subject property rather than drive to the Whitehaven campus. The traffic expert also concluded that it would be difficult to monitor and enforce the policy against student drop-off at the subject property every day.

Parking

44. The Applicant testified that parking associated with the proposed private school use would be wholly contained in the parking lot on the subject property, which will provide 15-17 parking spaces after its reconfiguration. Use of the parking lot would be limited almost entirely to the eight full-time and four part-time faculty and staff, with students occasionally picked up or dropped off for a doctor's or other appointment. Under the Applicant's proposal, the parking lot would be emptied before 6:00 p.m. on weekdays and unused on weekends.
45. DDOT and OP both concluded that the proposed private school's employees and occasional visitors would be adequately served by 15 spaces at the subject property.
46. ANC 3D was "skeptical" of the Applicant's claim that 15 parking spaces would be ample for faculty and visitors. The ANC stated that when space was taken to provide landscaping buffers for adjoining houses, play area, and turn-around room for delivery and trash trucks, the parking lot would likely be inadequate to handle visitors as well as staff. ANC 3D concluded that some staff and visitors would park on Ashby Street, thereby depriving residents of parking spaces by their homes.

Noise

47. The Applicant's proposal includes several measures intended to minimize noise impacts of the proposed school. These measures include that: the school would not use bells or loudspeakers; students would enter the school using the planned new steps constructed on the MacArthur Blvd. side of the site and immediately enter the school building, remaining outside only for a limited time in preparation for the shuttle bus or carpool at the end of the school day; faculty and staff would park in the parking lot and enter the rear entrance of the building; students would have limited outside play time, in small groups, during the school day; hours of operation of the school would be limited; the building would not be used after 6:00 p.m. on weekdays or at all on weekends or during the summer.
48. The subject property and the immediately surrounding area are currently subject to a certain level of noise disturbance from car, bus, and truck traffic on MacArthur Blvd. as well as from airplanes heading to or departing from National Airport.
49. The Applicant's sound expert testified that noise created by middle-school students on the subject property would not increase the noise presently generated in the vicinity by traffic on MacArthur Blvd. and by airplanes regularly flying overhead. Based on an outdoor sound test at the subject property involving the Applicant's current seventh-

graders, the sound expert concluded that only the residents of properties immediately adjacent to the subject property would be able to hear the children from inside their houses, and only for the limited time that the children would be outside. The sound expert testified that the noise levels from the proposed school would be compatible with the surrounding residential neighborhood and were not likely to cause objectionable impacts.

50. OP supported the Applicant's proposals to reduce potential noise impacts of the proposed private school use. OP concluded that its "only area of concern regarding noise" – that is, the impact on the neighbor to the south of the subject site – could "be solved by some type of buffer that will not block light and air to that property."
51. In its report, ANC 3D stated that "[i]t is likely that in playtime or recess, a cacophony of noises will arise that will be audible and disturbing to nearby neighbors, thus disturbing the tranquility of their neighborhood. . . ." The ANC was also concerned that "noise could become a year-round problem for the nearby neighbors," given the potential use of the subject property for summer school.

Harmony with Zoning Regulations and Map

52. OP testified that the proposed private school use fulfilled the intent of the Zoning Regulations and Map, which allow nonresidential uses compatible with single-family residential areas to create a suitable environment for family life. OP's conclusion was based on factors including that the subject property has been used for educational purposes for more than 40 years and would "continue in that vein," and that the existing building would retain its residential character and façade, with a small, compatible addition to make the building handicapped-accessible.
53. The Generalized Land Use Map identifies the subject property as being in the "low density residential" land use category, where single-family attached and detached houses are the predominant use.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. *See* 11 DCMR § 3104.1. The Applicant seeks a special exception pursuant to 11 DCMR § 3104.1 to allow a private school, under the conditions specified in section 206, for a maximum of 60 students, grades 7 through 9, and a maximum of 12 faculty and staff in the R-1-B district at 4925 MacArthur Blvd., N.W. (Square 1393, Lot 823).

In accordance with section 206, a private school must be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions. 11 DCMR § 206.2. The Applicant must also demonstrate that the proposed private school use will be in harmony with the general purpose and intent of

the Zoning Regulations and Map. 11 DCMR § 3104.1.

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 3D, the Board concludes that the proposed private school, as conditioned by the Board, can be located at the subject property so that it is not likely to become objectionable to adjoining and nearby property. As discussed below, the Board has imposed numerous conditions in this order in response to the Applicant's proposal, recommendations of OP and DDOT, and concerns raised by the ANC and the parties in opposition.

Noise. The Applicant proposed several measures intended to minimize potential adverse noise impacts of the proposed private school use on the subject property. The Office of Planning concluded that the proposed private school use would not generate objectionable noise impacts in light of the steps taken by the Applicant to minimize noise at the subject property. The Board concurs that the Applicant's efforts to limit objectionable noise should be implemented to avoid possible adverse impacts on neighboring property. In addition, the Board concludes that requiring the Applicant to provide adult supervision during any outdoor activity for students at the subject property – including, for example, during the morning dropoff and afternoon pickup periods and during outdoor break times – will also reduce the potential for adverse noise impacts associated with the proposed private school use. Accordingly, the Board adopts the requirements set forth in Conditions No. 1-6.

The Board is not persuaded by ANC 3D or the parties in opposition that the proposed private school use would generate objectionable noise impacts even after implementation of the required measures to limit noise. The school is for students in grades 7 through 9, who will spend the majority of their time at the subject property inside in classrooms, rather than outside playing. The Board is not persuaded that noise made by middle-school students, while sometimes audible to nearby residents, should be considered inherently objectionable. Nor is the Board persuaded that location of a private school at the subject property would destroy the "tranquility" of the surrounding neighborhood, given the current prevalence of car, truck, and bus traffic on MacArthur Blvd. as well as the frequency of substantial airplane noise at the subject property. The Board credits the testimony of the Applicant's sound expert, who concluded that the noise created by the students would not exceed the ambient noise in the vicinity of the subject property generated by traffic on MacArthur Blvd. and by airplanes approaching or leaving National Airport.

Traffic. The Board credits the testimony of DDOT in concluding that the proposed private school use is not likely to become objectionable to adjoining and nearby property because of traffic, provided that the Applicant fully implements and adheres to the requirements adopted in this order. The subject property is located on MacArthur Blvd., a four-lane commuter route served by Metrobus. The private school use, as conditioned in this order, is not likely to create objectionable impacts on Ashby Street or other local streets in the vicinity. Students will arrive via shuttle bus or public transportation or on

foot and enter the school through a new pedestrian entrance to the subject property to be constructed on MacArthur Blvd., while the dozen employees and occasional visitors will use the parking lot entered from Ashby Street.

The Board concludes that the shuttle bus system is an appropriate means to deliver students to the proposed private school with minimal traffic impacts for the areas surrounding the subject property and the Whitehaven campus. Recent improvements to the traffic patterns at the Whitehaven campus will accommodate the additional traffic associated with the private school at the subject property. The Board credits the testimony of the Applicant's traffic expert and DDOT in concluding that the number of shuttle bus trips necessary to ferry the students between campuses will not unduly disrupt traffic on MacArthur Blvd. during the brief periods the buses are stopped to drop off or pick up students. Therefore the Board adopts shuttle bus requirements set forth in Condition No. 7.

The Applicant has implemented a carpool program at its Whitehaven campus, and proposes to allow carpools of students to be dropped off and picked up at the subject property. The Board encourages the Applicant to continue its efforts to improve the person-per-vehicle occupancy average achieved under the carpool program. However, to further mitigate traffic impacts generated by a private school at the subject property, the Board concludes that the expanded carpool program serving the middle school students should also be directed to the Whitehaven campus, so as to maximize use of the shuttle bus system and minimize the number of vehicles involved in student drop-offs and pick-ups at the subject property. This requirement is adopted in Condition No. 8.

Parking. The proposed private school must provide ample parking space, but not less than that required in chapter 21 of the Zoning Regulations, to accommodate the students, teachers, and visitors likely to come to the site by automobile. 11 DCMR § 206.3. Pursuant to chapter 21, the proposed private school use, with 12 employees, must provide eight parking spaces. 11 DCMR §§ 2101.1.

The Applicant plans to reconfigure the parking lot on the subject property to provide at least 15 spaces, exceeding the minimum required by chapter 21 of the Zoning Regulations. The Board finds persuasive the Applicant's assertion that parking associated with the proposed private school use will be contained in the parking lot on the subject property during the normal school day, given the relatively few employees and the age of the students. The Board also credits the Applicant's testimony that 15 parking spaces can be provided on the reconfigured lot without encroaching significantly on existing green space or requiring the removal of any existing trees on the property.

Both DDOT and OP concluded that employees of the proposed private school and occasional visitors would be adequately served by 15 spaces at the subject property, while ANC 3D was "skeptical" that 15 parking spaces would provide the required ample

parking space. The Board is persuaded by site-plan drawings submitted into evidence by the Applicant that the planned reconfiguration of the existing lot will provide at least 15 spaces while also providing adequate space on the subject property for landscaping buffers, play area, and turn-around room for delivery and trash trucks.

To minimize potential adverse impacts associated with the private school use of the subject property, the Applicant proposed, among other things, to limit the frequency of special events conducted during evening hours during the school year. The Board concurs that the number of special events – whether held during or after the school day – should be limited. The Board concludes further that the Applicant should be required to arrange adequate off-street parking at an appropriate location separate from the subject property to minimize the likelihood that parents or other persons attending the special event will park on residential streets in the vicinity of the subject property. For example, the Applicant might accommodate vehicles at its Whitehaven campus and arrange shuttle buses to and from the subject property.

In light of the number of employees, limits on use of the subject property, and requirements for off-site parking for special events, the Board is not persuaded by the ANC's assertion that the reconfigured parking lot would be inadequate and that school employees and visitors will park on Ashby Street. The Board concludes that a minimum of 15 parking spaces constitutes "ample parking space" for the Applicant's private school use in accordance with the requirements of subsection 206.3, subject to conditions relating to the provision of off-street parking for limited daytime and evening special events associated with the school. These requirements are established in Conditions No. 9-15.

Number of students. The Applicant proposed a maximum enrollment of 60 students at the subject property, or an initial maximum of 40 students with an automatic increase to a maximum of 60 students after the first year provided the Applicant remained in compliance with conditions of approval of its special exception request. The Office of Planning recommended a maximum of 40.

The Board does not agree with the contention of the parties in opposition that the subject property is "inherently too small" for private school use, and adopts OP's recommendation of 40 students as a reasonable enrollment cap that will avoid potential adverse impacts on adjoining and nearby property. The Board declines to adopt the Applicant's proposal for an "automatic increase" in the enrollment cap to 60 after the first year of operation, because the Board cannot find, based on the testimony and evidence in the record in this proceeding, that a maximum enrollment of 60 students is not likely to become objectionable to adjoining and nearby property because of noise, traffic, or otherwise objectionable conditions that might arise with the higher enrollment. Accordingly, the Board adopts Condition No. 16.

The ANC's objection to an enrollment cap of 60 students was based in part on a Board decision reached 40 years ago not to allow expansion of an elementary school on the subject property to 75 students. The Board is not persuaded that the 1962 decision is apposite to the instant application however, given the likelihood of substantially changed conditions and in light of the differences between two proposed private school uses, including different plans for alteration of the existing building and the fact that the instant application involves students in grades 7 through 9 rather than as many as 75 young children in nursery and the lower elementary school grades.

The ANC also expressed concern about the likelihood that the Applicant would eventually seek to expand the size of its middle school student body at the subject property. The Board notes, however, that the Applicant is not permitted to exceed the cap established in this order, and that any proposal to increase enrollment at the subject property in the future would require approval by the Board as a special exception consistent with the requirements of section 206.

Otherwise objectionable conditions. The Board is not persuaded by the parties in opposition that the proposed private school use would create any otherwise objectionable conditions, including potential adverse impacts relating to stormwater runoff, privacy, diminished property values, or obligations for enforcing conditions of approval of the proposed private school. The Applicant, in coordination with the National Park Service, has designed a stormwater management system to be installed beneath the reconfigured parking lot to reduce or eliminate stormwater run-off from the subject property onto neighboring properties.

With regard to privacy, the Board notes that the Applicant's proposal will preserve the existing green space on the subject property, including several mature trees and side and rear yards that greatly exceed the minimum yards required under the Zoning Regulations in a location where both abutting properties are nonconforming lots with substandard side yards. The subject property has a fence along the eastern property line at the rear of the lot, which provides a buffer between the parking lot and the residence on the abutting property. To minimize potential intrusions on privacy, the Board adopts the Applicant's pledge to install a fence on the subject property if requested by the owner of the abutting property to the south (4913 MacArthur Blvd.). This requirement is set forth in Condition No. 17.

The Board heard testimony from the Applicant, ANC 3D, and the parties in opposition about the purported effect – positive or negative – that the proposed private school use on the subject property would have on the value of surrounding properties. However, no party offered compelling evidence demonstrating the proposed school's impact on property values. The Board is unable to make any finding or conclusion, as asserted by the ANC and the parties in opposition, that the proposed private school use would create an objectionable condition relating to diminished property values in the vicinity of the subject property.

With regard to enforcement, the Board is not persuaded by the objection by the parties in opposition that the "complex inter-related conditions, restrictions, governmental and private implementations, testing, monitoring and community meetings that would be required under even the most optimistic scenario, in order to force-fit the plan into workability, are unrealistic and would put a tremendous, continual burden on the neighborhood and its volunteer civic participants." The Applicant proposed to create a community liaison committee to address community concerns and to monitor enforcement of conditions of approval of the requested special exception; DDOT recommended implementation of the committee as a means to ensure long-term compliance with the conditions and "head off potential problems before they become problems." The Board agrees that a community liaison committee that includes representatives of the Applicant, ANC 3D, local citizens associations, and other interested persons can be instrumental in monitoring compliance with the conditions of approval without creating an undue burden on other residents of the surrounding neighborhood. Accordingly, the Board adopts Condition No. 18.

Harmony with the Zoning Regulations and Map. The Board concludes that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to the conditions adopted in this order. Private schools are permitted by special exception in all Residence zones, provided certain requirements are met. The Applicant has satisfied its burden of proof in demonstrating that the requested proposed private school use, operated in accordance with the adopted conditions, is consistent with the purpose and intent of the R-1-B zone and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map.

One of the purposes of the R-1 district is "to promote a suitable environment for family life." See 11 DCMR §§ 200.2. The Board credits the testimony of OP in concluding that the proposed private school for students in grades 7 through 9 on the subject property is a compatible use consistent with the promotion of a suitable environment for family life in a residential neighborhood. The Generalized Land Use Map identifies the subject property as being in the "low density residential" land use category, where single-family attached and detached houses are the predominant use. With the addition of the proposed private school, the area surrounding the subject property will remain predominantly residential.

The building on the subject property, although originally constructed as a single-family residence, has been used for educational purposes for more than 40 years. The subject property has a lot area considerably larger than other properties in the vicinity, and the building will continue to comply with all area requirements applicable in the R-1-B zone during its use as a private school. The renovations planned by the Applicant will preserve the residential appearance of the existing building while enhancing its safety and accessibility features. This requirement is adopted in Condition No. 19.

For the reasons stated above, the Board concludes that the Applicant has met the burden, it is hereby **ORDERED** that the application be **GRANTED**, subject to the following **CONDITIONS**:

1. No organized sports shall be conducted on the subject property. All outdoor activity involving students shall be conducted on-site and shall be recreational in nature. The Applicant shall provide adult supervision for all outdoor activity involving students at the subject property.
2. The Applicant shall not employ loudspeakers, amplified music, or bells at the subject property.
3. The Applicant shall schedule all deliveries to the subject property to occur between 9:30 a.m. and 4:00 p.m., Monday through Friday.
4. The school building shall be open for occupancy by students from 7:30 a.m. until 4:00 p.m., Monday through Friday.
5. The subject property shall not be occupied by students for a minimum of two months during the summer season.
6. The Applicant shall not use large commercial dumpsters on the subject property.
7. The Applicant shall provide a shuttle bus system to minimize the number of vehicles coming to the subject property to drop off or pick up students.
 - (a) Students who do not walk to school or arrive at the subject property by public transportation will be required to arrive at the gymnasium at the Applicant's Whitehaven campus between 7:30 a.m. and 7:55 a.m. on school days for transportation to the subject property by shuttle bus. In the afternoon, the students will be required to return to the Whitehaven campus via shuttle bus for pick-up.
 - (b) The shuttle buses shall employ a round-trip route between the Whitehaven campus and the subject property utilizing Whitehaven Parkway, MacArthur Blvd., Arizona Avenue, Loughboro Road, and Foxhall Road back to Whitehaven Parkway.
 - (c) The shuttle buses shall stop to on- and off-load students on MacArthur Blvd. in front of the school building. The Applicant shall ensure that the shuttle buses do not idle at the subject property but are released from the Whitehaven campus as necessary to make scheduled morning drop-offs and afternoon pick-ups.
 - (d) The Applicant shall monitor compliance with the shuttle bus system daily and shall make such compliance a condition of student enrollment. The Applicant shall not permit students to be dropped off or picked up at the subject property at arrival and dismissal times except in prearranged special circumstances, such as

when a child will arrive late due to a doctor's appointment. Student drop-offs in special circumstances shall be at the Ashby parking lot.

8. The Applicant shall establish a carpool program to and from the Whitehaven campus serving students at the subject property.
 - (a) The Applicant shall require carpools to drop off and pick up students at the Whitehaven campus in coordination with the shuttle bus system for transportation to and from the subject property.
 - (b) Before seeking a certificate of occupancy for the subject property, the Applicant shall submit the carpool program for review and approval by the District Department of Transportation (DDOT). The Applicant shall submit a progress report evaluating the carpool program to DDOT once per year; copies of the annual progress report and DDOT's response shall be given to the community liaison committee established by the Applicant pursuant to this order.
9. The total number of faculty and staff at the subject property shall not exceed 8 full-time and 4 part-time.
10. The Applicant shall provide at least 15 parking spaces on the subject property, as shown on the Applicant's site plan SP1 (Exhibit No. 340).
11. The Applicant shall use the subject property for special evening events after 4:00 p.m. no more than two times during the school year. Evening events shall finish no later than 10:00 p.m.
12. The Applicant shall hold no more than two daytime special events, when the school is open to parents and other non-students, at the subject property during the school year. Daytime special events shall be scheduled to occur between 10:00 a.m. and 4:00 p.m.
13. The Applicant shall arrange adequate off-street parking for daytime and evening special events at a location off-site so that persons attending the events are not likely to park on the streets in the vicinity of the subject property.
14. The Applicant shall not permit use of the subject property at any time by any persons or groups for purposes not related to the school use.
15. The Applicant shall arrange any lighting used to illuminate the parking lot on the subject property so that all direct rays of the lighting are confined to the surface of the parking lot.
16. The Applicant shall limit enrollment at the subject property to a maximum of 40 students in grades 7 through 9.
17. The Applicant shall install fencing, as shown on the site plan (Exhibit No. 340) along the southern property line, at the Applicant's expense, if requested by the abutting property

owner.

18. The Applicant shall establish and maintain a community liaison committee to address community concerns related to the private school use of the subject property. It is recommended that the community liaison committee include representatives of ANC 3D, the Palisades Citizens Association, owners of property abutting the subject property, and other interested persons. The Applicant shall conduct meetings of the committee at least quarterly, giving notice of the meetings to committee members and to the owners of all property within 200 feet of the subject property. Detailed minutes of all meetings shall be taken, maintained, and circulated among the members.
19. Expansion of the building on the subject property shall be limited to the area necessary for access as shown on the Applicant's site plan (Exhibit No. 340).
20. The special exception shall be valid except that this Order shall terminate and require modification upon a finding by the Board that the Applicant has either admitted violating, paid a fine for violating, or has been found by the Department of Consumer and Regulatory Affairs, after hearing, to have violated the same condition on three or more occasions within five years.

VOTE: **4-0-1** (Geoffrey H. Griffis, Anne M. Renshaw, Carol J. Mitten, and David A. Zaidain to approve with conditions; Curtis L. Etherly, Jr. not present, not voting)

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

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

FINAL DATE OF ORDER: March 25, 2003

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

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

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE

REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY
ISSUED PURSUANT TO THIS ORDER.

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.

MN/RSN

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

Application No. 17045 of Neavelle A. Coles, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, a variance from the open court requirements under section 406, and a variance from the nonconforming structure requirements under subsection 2001.3, to construct a two-story addition to an existing single-family dwelling in the R-4 District at premises 1215 E Street, N.E. (Square 1008, Lot 188).

HEARING DATE: July 29, 2003

DECISION DATE: September 9, 2003

DECISION AND ORDER

This application was submitted June 2, 2003 by the owner of the property that is the subject of the application, Neavelle Coles ("Applicant"). The self-certified application requested several variances needed to allow the rehabilitation of a garage and carriage house and construction of a two-story addition to the rear of the Applicant's row house at 1215 E Street, N.E.

Following a hearing on July 29, 2003 and a public meeting on September 9, 2003, the Board voted to approve the application with respect to the open court and to deny it with respect to lot occupancy.

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. By memorandum dated June 2, 2003, the Office of Zoning gave notice of the application to the Office of Planning, the Department of Transportation, the Councilmember for Ward 6, Advisory Neighborhood Commission ("ANC") 6A, and Single Member District/ANC 6A06. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters or memoranda dated June 6, 2003, to the Applicant, ANC 6A, and all owners of property within 200 feet of the subject property providing notice of the hearing. Notice of the hearing was published in the *D.C. Register* on June 13, 2003 (50 DCR 4728).

Requests for Party Status. ANC 6A was automatically a party in this proceeding. George Olson, a resident of a row house across the street from the subject property who did not attend the public hearing, made an untimely request for party status as a proponent; his letter was received into the record as a letter in support of the application. The Board received letters in support of the application from the residents of both row houses immediately adjoining the subject property.

Applicant's Case. The Applicant's architect, Charles Bryant, presented testimony and evidence at the public hearing, stating that the variances were needed to allow construction of a two-story addition to the rear of a single-family row house dwelling to expand the kitchen and breakfast area on the first floor and to create a new master bedroom on the second floor, thereby creating a third bedroom in the house.

Government Reports. By memorandum dated July 17, 2003, the Office of Planning ("OP") recommended (a) approval of a special exception under section 223 to grant relief needed from the open court requirements under section 406 and nonconforming structure provision under subsection 2001.3, and (b) denial of the requested variance from the lot occupancy requirements of section 403.

ANC Report. By letter dated July 14, 2003, the chairman of ANC 6A indicated that at a regularly scheduled and properly noticed meeting on July 10, 2003, ANC 6A voted unanimously (6-0, with five commissioners comprising a quorum) to support the application.

FINDINGS OF FACT

1. The subject property is located at 1215 E Street, N.E. (Square 1008, Lot 188) in the Capitol Hill neighborhood of Ward 6. The site is improved with a two-story row house dwelling, built around 1908 and facing E Street, and a two-story accessory building abutting a public alley at the rear of the lot.
2. The subject property is a rectangular interior lot on the south side of E Street. Chain link or wooden fences, between four and seven feet tall, extend along both side property lines behind the row house. Development in the vicinity of the subject property consists primarily of similar two- or three-story row houses.
3. The accessory building, which formerly served as a carriage house, is in poor condition. According to OP, the subject property is the only lot in the square that retains a rear garage/carriage house.
4. On July 17, 2002, the Applicant was issued Building Permit No. B451210, which approved modification of plans for a prior permit, No. B447208. The building permit authorized interior renovation of the residence, demolition of a one-story porch at the rear of the dwelling, construction of a new two-story rear addition in substantially the same location as the porch, and demolition of the garage/carriage house. The Applicant indicated that issuance of the building permit was conditioned on removal of the accessory building because otherwise the planned rear addition would increase total lot occupancy beyond the matter-of-right maximum. However, after receiving the building permit, the Applicant decided to

retain and renovate the accessory building for use as a garage with second-floor storage space. The rear addition is now substantially completed.

5. The subject property has dimensions of 16 feet by 95 feet, and a lot area of approximately 1,520 square feet. The new rear addition, which replaced a porch, increased lot occupancy only slightly, from 79 percent (1,128 square feet) to 80 percent (1,368 square feet). A court, four feet wide and 14 feet long, is located at the rear of the row house on the west side of the lot. The rear yard, after construction of the new addition, is 36 feet.
6. The subject property and surrounding properties are zoned R-4. The R-4 district requires a minimum lot area of 1,800 square feet, with a minimum lot width of 18 feet; maximum lot occupancy of 60 percent; a rear yard with a depth of at least 20 feet; and six feet as the minimum width of an open court. 11 DCMR §§ 401.3, 403.2, 404.1, 406.1.
7. The subject property is nonconforming with respect to lot area, lot width, lot occupancy, and width of open court.
8. The subject property is not located within a historic district.
9. The Applicant noted the nonconforming aspects of the subject property with respect to size and area, and testified that failure to obtain variance relief would result in an inability to rehabilitate the property consistent with current market expectations for residential properties in the neighborhood and would cause financial hardship.
10. The Applicant also testified that the subject property was unique in that it retained the historic carriage house, and that approval of the requested variances would not create serious impacts with respect to traffic or noise.
11. The Office of Planning noted that the rear addition appears inconsistent with open court and nonconforming structure provisions of the Zoning Regulations, and testified that special exception approval under section 223 "would address expanding the nonconforming aspects of the existing building onto the new addition." However, OP also noted that the Applicant's proposed 80 percent lot occupancy requires variance relief because section 223 limits increases in allowable lot occupancy to 70 percent.
12. OP testified that the rear addition did not have an adverse effect on the use or enjoyment of any abutting or adjacent dwelling. OP noted that the rear addition has a footprint similar to the previous porch in the same location, has no windows

- along the common eastern wall, and continues the four-foot court setback along the west side. OP also concluded that the rear addition is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and would not tend to affect adversely the use of the neighboring properties.
13. OP testified that the size and shape of the subject property were not exceptional conditions relative to other properties in the same square, where lot areas range from 1,108 to 1,710 square feet, and only one lot (Lot 204) is as wide as 18 feet.
 14. OP also concluded that the zoning regulations did not present a practical difficulty for the Applicant. OP noted that the Applicant secured a building permit to construct the rear addition premised on the removal of the garage/carriage house, and that the Applicant's ability to use the subject property after demolition of the carriage house was apparently similar to that of neighboring property owners.
 15. Noting that the Applicant proposed 80 percent lot occupancy where a maximum of 60 percent is permitted as a matter of right, OP concluded that the requested variance relief for lot occupancy could not be granted without impairing the intent, purpose, and integrity of the Zoning Regulations and Map.
 16. ANC 6A voted unanimously to support the Applicant's request for variances from lot occupancy, open court, and nonconforming structure requirements needed to construct a rear addition. The ANC concluded that granting the requested variances would not create substantial detriment to the public good, and the rowhouse "would continue to be used as a single-family dwelling as specified in the zoning regulations."
 17. The ANC noted that the garage/carriage house is not located in a historic district and thus "has no special protections despite its age and possible historic significance," but asked the Board to "give consideration to the neighborhood's desire to retain the carriage house/garage in considering the application." The ANC stated that retention of the garage/carriage house "would result in a lot occupancy of 73.7%, ... only 1.7% higher than the lot occupancy prior to construction of the addition, and 3/7% higher than the lot occupancy that could be allowed through special exception." ANC 6A recommended consideration of the garage/carriage house has an "extraordinary or exceptional situation or condition" in that there are few other structures of similar construction and age on similar nearby lots. According to the ANC, "[d]emolishing this valued structure would be a detriment to the public good by removing an historic building element" and "would result in lot occupancy of only 53.7% for the owner."

18. The Board received a letter from Teresia Bush, resident of 1213 E Street, N.E. (the row house abutting the subject property on the west), expressing her support for preservation of the carriage house, which was "threatened with extinction" because the Applicant chose "to add space to the main house, thereby reducing the area of the backyard to slightly smaller than the size required." Teresia Bush indicated no objection to the rear addition, although it caused a small loss of light and privacy at the rear of her residence.
19. The Board received a letter from Bruce Grefrath and Susan Parker, residents of 1217 E Street, S.E. (the row house abutting the subject property on the east), supporting the retention of the carriage house and indicating that the new rear addition to the subject property was "a vast improvement over the rat infested old structure."

CONCLUSIONS OF LAW

The Applicant requests a variance from the lot occupancy requirements under section 403, a variance from the open court requirements under section 406, and a variance from the nonconforming structure requirements under subsection 2001.3 to construct a two-story addition to an existing single-family row dwelling. The Applicant has already constructed the rear addition pursuant to a permit issued on condition of demolition of the carriage house at the rear of the property; the Applicant now seeks the requested variances in order to retain the carriage house for use as a garage. 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 Board notes OP's testimony that the size and shape of the subject property are not exceptional conditions relative to other properties in the same square. However, with respect to the open court, the Board finds that existing nonconforming conditions – the narrowness of the lot and the four-foot width of the open court created by the original rowhouse – create an exceptional condition and that practical difficulties would result from the strict application of the Zoning Regulations. The existing court is four feet wide, where a minimum of six feet is required, and the lot width is 16 feet, where an 18-foot lot width is required. Strict application of the Zoning Regulations with respect to open courts would allow a rear addition only 10 feet wide on the subject property.

Instead, the Applicant's rear addition continues the existing four-foot open court, thereby allowing an addition of the same width as the rear portion of the existing row house. The Board credits the testimony of OP and the neighboring property owners that the rear addition is in harmony with the general purpose and intent of the zone plan with respect to the open court and does not adversely affect the use of neighboring property.

Accordingly, the Board grants the Applicant's request for a variance from the open court requirements under section 406 to construct a two-story addition to the existing single-family dwelling. The Board also grants the Applicant's request for a variance from the nonconforming structure requirements under subsection 2001.3 to the extent that the addition does not conform to the open court requirements.

With respect to the Applicant's request for a variance from lot occupancy requirements, the Board credits the testimony of the Applicant and OP that the subject property is unique in that it contains the only carriage house remaining in the square. However, the Board is not persuaded by the Applicant's assertions of practical difficulty arising from the strict application of the zoning requirements with respect to lot occupancy. The rowhouse dwelling is typical for its location and was purchased by the Applicant despite perceived shortcomings with respect to number of bedrooms and the size of the kitchen. The Applicant has completed construction of a rear addition built pursuant to a permit issued on the basis of the Applicant's intention to demolish the carriage house, so that the new addition would conform to the requirements of the Zoning Regulations. The need for variance relief arises from the Applicant's current desire to retain the carriage house for use as a garage. In light of the subject property's nonconforming aspects, the Applicant's assertions that the carriage house should be retained as a unique or historic structure should have been addressed before the rear addition was built.

Nor did the Applicant demonstrate that the requested variance from the lot occupancy requirement would be consistent with the general intent and purpose of the zone plan and map. The rear addition did not significantly increase lot occupancy relative to the porch it replaced, but the construction of a new rear addition along with retention of the existing garage/carriage house would result in lot occupancy (80 percent) that is substantially greater than that permitted in the R-4 zone as a matter of right (60 percent) or by special exception (70 percent). The Board concurs with OP that the requested variance relief for lot occupancy cannot be granted without impairing the intent, purpose, and integrity of the Zoning Regulations and Map.

The Board is sympathetic to the interest expressed by the ANC and neighboring property owners in seeing the carriage house preserved and renovated for use as a garage. However, as the ANC notes, the subject property is not located in a historic district and thus the carriage house is not subject to historic preservation protections. The Board also notes that the ANC's recommendation was based in part on an inaccurate calculation of

lot occupancy; retention of the carriage house, after construction of the new rear addition, would result in a lot occupancy of 80 percent, rather than the 73.7 percent stated by the ANC, in a zone district where 60 percent is permitted as a matter of right.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a variance from the open court requirements under section 406 but not with respect to variances from lot occupancy requirements under section 403 or from the nonconforming structure requirements under subsection 2001.3. Accordingly, it is therefore **ORDERED** that the application is **GRANTED** in part and **DENIED** in part.

VOTE: **4-0-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, and Peter G. May to approve a variance from the open court requirements of section 406; David Zaidain not voting, not having heard the case).

VOTE: **1-3-1** (Ruthanne G. Miller in favor of a motion to grant a variance from lot occupancy requirements of section 403; Geoffrey H. Griffis, Curtis L. Etherly, Jr., and Peter G. May opposed; David A. Zaidain not voting, not having heard the case).

VOTE: **3-1-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., and Peter G. May to deny variances from lot occupancy requirements of section 403 and from the nonconforming structure requirements under subsection 2001.3; Ruthanne G. Miller opposed; David Zaidain not voting, not having heard the case).

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

Each concurring Board member approved the issuance of this order.

FINAL DATE OF ORDER: JAN 21 2004

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

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

REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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

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

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

Application No. 17097 of Hamilton and Georgia McGraw, pursuant to 11 DCMR § 3104.1, for a special exception to allow a two-story rear addition to a single-family dwelling under section 223, not meeting the side yard requirements (section 405) in the R-1-B District at premises 5240 Sherrier Place, N.W. (Square 1415, Lot 815).

HEARING DATE: January 6, 2004
DECISION DATE: January 6, 2004 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. ANC 3D did not participate in the application. The Office of Planning (OP) submitted a report in support of the application. The Board waived the affidavit of posting requirements.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under § 223. No parties appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

BZA APPLICATION NO. 17097
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Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., Anthony J. Hood and David A. Zaidain 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: JAN 15 2004

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

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

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

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,

BZA APPLICATION NO. 17097

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

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

Application No. 17098 of Maret School, Inc., pursuant to 11 DCMR § 3104.1, for a special exception to allow the placement of five temporary administrative office and classroom modular trailers on an existing private school campus under section 206, and a special exception to locate a portion of the required number of parking spaces at an off-site location during the construction activity under subsection 2116.5, in the R-1-B District at premises 3000 Cathedral Avenue, N.W. (Square 2113, Lot 843).

HEARING DATE: January 6, 2004
DECISION DATE: January 6, 2004 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. ANC 3C submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under § 206. 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 206, 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

BZA APPLICATION NO. 17098

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

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

1. The approval for the placement of five temporary modular trailers for classroom and administrative use, and the temporary relocation of a portion of the required number of parking spaces to an off-site location, is effective through December 31, 2005.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., Anthony J. Hood and David A. Zaidain 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: JAN 15 2004

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

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

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

BZA APPLICATION NO. 17098

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

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

Application No. 17101 of Catherine C. and Gerald P. Tyson, pursuant to 11 DCMR § 3104.1, for a special exception to allow a one story rear addition and open deck to a single-family detached dwelling under section 223, not meeting the side yard requirements (section 405) in the R-1-B District at premises 5609 Sherrier Place, N.W. (Square 1451, Lot 836).

HEARING DATE: January 13, 2004
DECISION DATE: January 13, 2004 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. ANC 3D submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under § 223. No parties appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted, 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.

BZA APPLICATION NO. 17101
PAGE NO. 2

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

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., 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: JAN 15 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.

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BZA APPLICATION NO. 17101

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

ZONING COMMISSION NOTICE OF FILING**Case No. 04-01****(Consolidated PUD & Map Amendment – 2215 Constitution Avenue, N.W.)****January 21, 2004****THIS CASE IS OF INTEREST TO ANC 2A**

On January 13, 2004, the Office of Zoning received an application from the American Pharmacists Association (the "applicant") for approval of a consolidated planned unit development and a related map amendment for the above-referenced property.

The property that is the subject of this application consists of Square 62, Lots 19, 810, part of 813, 814, and 815, in Northwest Washington, D.C. (Ward 2), with a street address of 2215 Constitution Avenue, N.W. Lot 19 is currently zoned SP-2 and the other four lots are currently unzoned.

The applicant proposes to construct an addition to its existing headquarters that will consist of approximately 157,775 square feet of gross floor area. In addition, the applicant seeks a related map amendment to zone the unzoned lots to SP-2. 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.

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES
PUBLICATIONS PRICE LIST

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS (DCMR)

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3	DCMR ELECTIONS & ETHICS (JUNE 1998)	\$20.00
4	DCMR HUMAN RIGHTS (MARCH 1995)	\$13.00
5	DCMR BOARD OF EDUCATION (JUNE 1997)	\$26.00
6A	DCMR POLICE PERSONNEL (MAY 1988)	\$8.00
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8	DCMR UNIVERSITY OF THE DISTRICT OF COLUMBIA (JUNE 1988)	\$8.00
9	DCMR TAXATION & ASSESSMENTS (APRIL 1998)	\$20.00
10	DCMR DISTRICT'S COMPREHENSIVE PLAN (PART 1, FEBRUARY 1999)	\$33.00
10	DCMR PLANNING & DEVELOPMENT (PART 2, MARCH 1994) w/1996 SUPPLEMENT*	\$26.00
11	DCMR ZONING (FEBRUARY 2003)	\$35.00
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15	DCMR PUBLIC UTILITIES & CABLE TELEVISION (JUNE 1998)	\$20.00
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18	DCMR VEHICLES & TRAFFIC (APRIL 1995) w/1997 SUPPLEMENT*	\$26.00
19	DCMR AMUSEMENTS, PARKS & RECREATION (JUNE 2001)	\$26.00
20	DCMR ENVIRONMENT - CHAPTERS 1-39 (FEBRUARY 1997)	\$20.00
20	DCMR ENVIRONMENT - CHAPTERS 40-70 (FEBRUARY 1997)	\$26.00
21	DCMR WATER & SANITATION (FEBRUARY 1998)	\$20.00
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22	DCMR HEALTH CARE & COMMUNITY RESIDENCE FACILITIES *SUPPLEMENT (AUGUST 1986 - FEBRUARY 1995)	\$13.00
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