BOARD FOR THE CONDEMNATION OF INSANITARY BUILDINGS

NOTICE OF PUBLIC INTEREST

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northwest			
1106R Allison Street-Rear	804	2917	4
1108R Allison Street-Rear	809	2917	4
527 Buchanan Street	114	3218	4
1311 Buchanan Street	24	2814	4
1205 Clifton Street, NW	40	2865	1
1405R Crittenden Street-Rear	823	2706	4
1407 Delafield Place	21	2709	4
821 Euclid Street-Rear	84	2884	1
1709 Euclid Street	30	2665	1
617 Farragut Street	106	3212	4
1304 Farragut Street	41	2807	4
519 Florida Avenue	35	3093	1
521 Florida Avenue	26	3093	1
3200 Georgia Avenue	909	2892	1
3203 Georgia Avenue	809	3042	1
4419 Georgia Avenue	815	3020	4
4820 Iowa Avenue	30	2709	4
425 Irving Street-Rear	64	3049	4
535 Irving Street	31	3048	1
535 Irving Street-Rear	31	3048	1
315 K Street	804	526	2
470 K Street	44	516	2
440 Kenyon Street-Rear	43	3049	1
636 Kenyon Street	145	3047	1
636 Kenyon Street-Rear	145	3047	1
1217 Kenyon Street	117	2844	1
1331 Kenyon Street	47	2843	1
830 Lamont Street	97	2892	1
421 Marietta Place-Rear	157	3263	4
718 Marietta Place	43	3155	4
4001 Marlboro Place	48	3313	4
1350 Meridian Place	107	2836	1
1021 Monroe Street	74	2832	1
1824 Monroe Street	813	2614	1
1342 Montague Street	46	2796	4

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northwest (cont'd)			
1342 Montague Street-Rear	46	2796	4
234 N Street	127	555	5
408 N Street	863	513	2
3500 Nebraska Avenue	24	1599	3
3526 New Hampshire Ave	91	2614	1
1424 North Capitol Street	10	616	5
1424 North Capitol Street-Rear	10	616	5
4922 North Capitol Street	67	3401	4
407 O Street	803	511	2
505 O Street	36	479	5
507 O Street	37	479	5
509 O Street	2001/2002	479	5
820 Otis Place	119	2895	1
88-88 1/2 P Street	825	616	2
219 P Street	833	475	5
3245 Patterson Street-Rear	25	2021	4
1000 Park Road	39	2841	1
1424 Parkwood Place	46	2688	1
753 Quebec Place-Rear	170	3031	1
734 Quincy Street	57	3130	1
936 Quincy Street	92	2901	4
50 R Street-Rear	31	3101	5
533 Randolph Street	105	3232	4
411 Randolph Street	82	3237	1
501 Rhode Island Avenue	33	475S	2
1000 Rhode Island Avenue	19	337	2
1427 Rhode Island Avenue	27	210	2
1429 Rhode Island Avenue	28	210	2
735 Rock Creek Church Road-NW	58	3130	4
1421 T Street-Rear	845	205	1
531 U Street	37	3079	2
131 Varnum Street	803	3321	4
146 W Street	823	3120	5
1305 Wallach Place	169	237	1
3116 Warder Street	38	3048	1
3224 Warder Street-Rear	13	3046	1
1011R Webster Street-Rear	808	2917	4
1227 1st Street	9	618	5
1837 1st Street	126	3110	5
1202 3rd Street	837	523	2
1419 3rd Street	60	553	2

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northwest (cont'd)			
5311 3rd Street-Rear	6	3328	4
1716 4th Street	803	507	5
1809 4th Street	17	3095	1
1416 5th Street	26	479	2
1603 5th Street	111	509	2
3927 5th Street	78	3237	4
4109 5th Street	47	3241	4
4403 5th Street	12	3247	4
4409 5th Street	15	3247	4
1104 6th Street	859	449	2
1134 6th Street	30	449	2
1407 6th Street	30	479	2
1539 7th Street	179	445	2
1503 9th Street	29	397	2
4428 9th Street-Rear (Addition)	34	3020	4
1431-33 11th Street	41	338	2
3219 11th Street	26	2845	1
3221 11th Street	27	2845	1
2200 12th Street-Rear	62	271	1
2246 12th Street	212	271	1
2219 13th Street	86	271	1
3637 13th Street-Rear	145	2829	1
5008 13th Street	53	2806	4
5008 13th Street-Rear	53	2806	4
3564 14th Street	24	2688	1
4024 14th Street	53	2694	4
5310 14th Street	13	2716	4
3222 19th Street	817	2604	1
1617 21st Street	136	93	2

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northeast			
2301 Bladensburg Road	41	4359	5
2836 Brentwood Road	001	4316	5
207 C Street-Rear	847	757	6
1848 Central Place	39	4047	5
1538 Const. Avenue	43	1068SE	6

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northeast (cont'd)			
1820 Corcoran Street	18	4049	5
600 Division Avenue	13	5196	7
1717 E Street	143	4546	6
1721 E Street	144	4546	6
1360 E Capitol Street-Rear	82	1035	6
635 Emerson Street	8	3788	4
4404 Foote Street	813	5130	7
1229 Franklin Street	20	336	5
1653 Gales Street	182	4540	6
1655 Gales Street	183	4540	6
4225 Grant Street	63	5092	7
914 H Street	63	933	6
1017 Hamlin Street	81	3875	5
303 K Street	804	775	6
1656 Kramer Street	207	4540	6
25 Michigan Avenue	48	3500	5
1118 Montello Avenue	71	4070	5
1125 Morse Street	140	4070	5
2422 Otis Street-Rear	48	4298	1
52 Q Street	105	3520	5
58 Q Street	102	3250	5
50 RI Avenue-Rear	3	3508	5
1515 Rhode Island Avenue	43	4131	5
1515 Rhode Island Avenue-Rear	43	4131	5
4310 Sheriff Road	819	5097	7
4326 Sheriff Road	831	5097	7
1741 Trinidad Avenue	26	4082	5
142 Webster Street	42	3668	4
1221 Wylie Street	169	1003	6
1020 3rd Street	34	749	6
1022 3rd Street	33	749	6
2407 3rd Street	28	3555	5
621 4th Street	93	810	6
2508 4th Street	51	3554	5
2819 5th Street-Rear	45	3640	5
1009 7th Street-Rear	84	887	6
608 8th Street	45	891	6
914 9th Street	45	910	6
4100 13th Street	24	Par 146	5
243 14th Place	78	1055	6

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northeast (cont'd)			
2205 14th Street-Rear	52	4118	5
2207 14th Street-Rear	53	4118	5
2209 14th Street-Rear	54	4118	5
3122 16th Street	39	4014	5
2617 17th Street	806	4126	5
1234 18th Place	811	4445	5
1236 18th Place	811	4445	5
3709 24th Street-Rear	805	4294	5
2718 26th Street	34	4265	5
913 43rd Place	47	5096	7
1044 44th Street	70	5125	7
1117 48th Place	84	5158	7
945 52nd Street	803	5199	7
234 56th Street	144	5250	7
306 57th Street	84	5247	7
310 57th Place	84	5247	7
314 57th Place	87	5247	7

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Southeast			
4427 A Street	107	5350	7
27 Atlantic Street	54	6170	8
5050 B Street	28	5326	7
5034 Bass Place	25	5325	7
4926 Call Place	33	5336	7
4030 Call Place	32	5336	7
5000 Call Place	35	5323	7
420 Chesapeake Street-Rear	808	6165	8
422 Chesapeake Street-Rear	809	6165	8
1720 D Street	87	1100	6
3206 D Street	802& 806	5430	7
3305 Dubois Place	808	5431	8
1229 E Street	816	1019	6
3326 Ely Place	807	5444	6
1811 Erie Street	44	5801	8
2812 Gainesville Street	2	5729W	8

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Southeast			
3224 Minnesota Avenue-Rear	30	5485	8
1415 Morris Road	50	5809	6
2329 Q Street	56	5587	6
1219 Sumner Road	979	5865	8
1242 W Street	99	5782	8
4001 4th Street	39	6167	8
4005 4th Street	40	6167	8
2105 13th Street	681	5782	6
3403 15th Street	28	5917	8
1602 17th Street	801	0155	6
1427 22nd Street	48	5564	6
2419 25th Street-Rear	160	Par 214	7
20 53rd Place	884	5284	7

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Southwest			
71 Forrester Street	67	6240	8
73 Forrester Street	68	6240	8

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PUBLIC INTEREST

The Director of the Department of Consumer and Regulatory Affairs pursuant to D.C. Law 2-144, effective March 3, 1979-, **"The Historic Landmark and District Protection Act of 1978"** hereby gives notice that the addresses listed below, as requested permission to demolish, altar, sub-divide or erect new structures at the following location(s):

Application Date	Address	Lot	Square	Use
6/26/03	601 13th Street, NW	44	290	Sign/Office
	107 7th Street, NW	104	870	Concept
	824 D Street, SE	825	924	Concept
	1313 Q Street, NW	80	240	Garage SFD
	2000 Rosemount Avenue, NW	807	2618	Concept
	1412 Q Street, NW	878	209	Awning Office
	2820 Connecticut Avenue, NW	76	2107	Concept
	1644 Avon Place, NW	257	1282	Add/SFD
6/27/03	3149 19th Street, NW	98	2603	Add/SFD
	2816 O Street, NW	848	1240	Add/SFD
	3300 14th Street, NW	795	2676	ATM/Bank
6/30/03	645 Maryland Avenue, NE	71 & 72	864	Concept
	1911 6th Street, NW	809	309	Concept
	1615 H Street, NW	41	186	Roof Top Tent Office
	3331 Dent Place, NW	871	1290	Add/ A.R/ SFD
	2917 O Street, NW	222	1258	Window/ Door/ SFD
	1687 32nd Street, NW	11	1281	Stair/ Window SFD

BOARD OF ELECTIONS AND ETHICS
CERTIFICATION OF ANC/SMD VACANCIES

The District of Columbia Board of Elections and Ethics hereby gives notice that there are vacancies in eleven (11) Advisory Neighborhood Commission offices, certified pursuant to D.C. Code §1-309.06(d) (2) [(2001 Ed.].

VACANT: **3D07, 3D08**
5C10, 5C11
6B11
8B03, 8C05, 8C06

Petition Circulation Period: **Wednesday, July 9, 2003 thru Tuesday, July 29, 2003**
Petition Challenge Period: **Friday, August 1, 2003 thru Thursday, August 7, 2003**

VACANT: **4A05**
8E01

Petition Circulation Period: **Tuesday, June 24, 2003 thru Monday, July 14, 2003**
Petition Challenge Period: **Thursday, July 17, 2003 thru Wednesday, July 23, 2003**

VACANT: **3E05**

Petition Circulation Period: **Monday, July 7, 2003 thru Monday, July 28, 2003**
Petition Challenge Period: **Thursday, July 31, 2003 thru Wednesday, August 6, 2003**

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

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

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

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

Certification of Filling a Vacancy
In Advisory Neighborhood Commission

Pursuant to D.C. Code section §1-309.06 (d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections and Ethics ("Board") from the affected Advisory Neighborhood Commission, the Board hereby certifies that a vacancy has been filled in the following single member district by the individual listed below:

Sally MacDonald
Single Member District 3C03

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

NOTICE OF PERMIT ACTION

Notice is hereby given that, pursuant to 40 CFR Part 51.61, D.C. Code § 1.1506, and 20 DCMR § 206, the Air Quality Division (AQD) of the Environmental Health Administration located at 51 N Street, N.E., Washington, D.C., intends to issue a permit to operate three (3) new 3.594 million BTU per hour boilers to The George Washington University, Funger Hall located at 2201 G Street, N.W., in the District of Columbia.

The permit is available for public review at the AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Abraham T. Hagos at (202) 535-1354.

Interested persons may submit written comments within 30 days of publication of this notice. Comments should be addressed to Stanley C. Tracey, Chief, Engineering and Planning Branch, Air Quality Division, Environmental Health Administration, 51 N Street, N.E., Washington, D.C. 20002. No written comments postmarked after August 18, 2003 will be accepted. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address, and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit. For more information, please contact Abraham T. Hagos, at (202) 535-1354.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

NOTICE OF PERMIT ACTION

Notice is hereby given that, pursuant to 40 CFR Part 51.61, D.C. Code § 1.1506, and 20 DCMR § 206, the Air Quality Division (AQD) of the Environmental Health Administration located at 51 N Street, N.E., Washington, D.C., intends to issue a permit to operate three (3) 5.189 million BTU per hour Smith 28A series model 28a-16 boilers and six (6) 2.0 million BTU per hour Lochinvar Intelli-Fin gas fired boiler at The Washington Post, located at 1150 15th Street, N.W., in the District of Columbia.

The Permit is available for public to review at the AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Abraham T. Hagos, at (202) 535-1354.

Interested persons may submit written comments within 30 days of publication of this notice. Comments should be addressed to Stanley C. Tracey, Chief, Engineering and Planning Branch, Air Quality Division, Environmental Health Administration, 51 N Street, N.E., Washington, D.C. 20002. No written comments postmarked after August 18, 2003 will be accepted. The written comments must also include the person's name, telephone number, affiliation, if any, and mailing address, and must contain a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit. For more information, please contact Abraham T. Hagos at (202) 535-1354.

District of Columbia's Historic Preservation Office

PUBLIC NOTICE

FY 2004 GRANT-IN-AID ANNOUNCEMENT HISTORIC PRESERVATION FUND SUBGRANTING ASSISTANCE PROGRAM

ROUND I REQUEST FOR APPLICATIONS GENERAL SOLICITATION NOTIFICATION

The District of Columbia's Historic Preservation Office (HPO) announces the availability of matching grant funds from the Federal Historic Preservation Fund (HPF) for activities consistent with priorities established under the DC Historic Preservation Plan. The DC HPF subgranting program is made possible through an annual appropriation awarded by the National Park Service.

The DC State Historic Preservation Office is currently soliciting applications for its Round 1 Open-Project competitive selection process. In most cases, subgrant funding applied for must be matched by the applicant at 40% of the total cost of the project. In FY2004, total grant funds available for subgrants and contracts is approximately $160,000 and awards will generally range from $3,500 to $35,000 (in federal share). The deadline for receipt of any and all sealed applications is **3:00 p.m., Friday October 17, 2003.** All applications should be mailed to the District of Columbia Historic Preservation Office, 801 North Capitol Street, NE, Suite 3000, Washington, DC 20002, and must fully comply with submission guidelines specified in the 2004 Historic Preservation Fund Grants Manual (available from the DC Historic Preservation Office.)

Eligible applicants for HPF subgrant awards include nonprofit organizations, private individuals (as contractors to the HPO) or groups working in partnership with nonprofits, institutions of higher learning, and other agencies of the Government of the District of Columbia.

Although all historic preservation survey and planning related program activities outlined under Section 101 (a) of the National Historic Preservation Act of 1966 (as amended) are eligible, priority will be given to those submissions that respond to the priority projects listed below.

Subgrants

Survey and Inventory

1. Photographic surveys of the Capitol Hill, Dupont Circle, 16th Street, 14th Street and Georgetown Historic Districts. Surveys must include both high-resolution digital and black and white archival photography. (Federal match may be provided for developing negatives of the black/white film but not actual photos.)
2. Intensive level historic resources surveys of the Deanwood and Washington Heights areas of D.C.

National Register

3. National Register nominations for the Takoma Park and Shaw Historic District proposed boundary extensions, Tenleytown Historic District and Meridian Hill.

Education/Outreach/

4. Development and implementation of an outreach program focused on sites listed in the D.C. Historic Resources Survey of Places of Worship to solicit community interest in a multiple property National Register nomination or technical training.
5. Development and implementation of an outreach program focused at soliciting community interest in developing a National Register nomination for the Columbia Heights area.
6. Citywide, technical workshop(s) targeting historic housing issues including window and door replacement, masonry repair.
7. Completion of the African American Heritage Trail program. Work includes identifying locations for, and designing signage for, sites surveyed and included on the African American Heritage Trail.

Predevelopment/Planning

8. D.C. Public Libraries predevelopment planning and implementation program to identify, access and address potential impact of long-range modernization on potential historic features of the city's public libraries.
9. Structural assessment of the Holt House, located on the grounds of the National Zoo.
10. Projects related to the planning, use or implementation of Conservation Districts within the District of Columbia.

Archaeology

11. Development of a Catalog of Archaeological Resources. Work includes developing a database of information in existing archaeological reports such as sites found, significance, level of testing and other information as relevant.
12. Development of a workshop targeting the archaeological community to discuss the direction of archaeology in the District of Columbia.

Other Activities

13. Historic preservation projects related to D.C.'s Main Street Initiative.

Contracts

1. Completion of the D.C. Building Permit Database. Work includes finishing the Building Permit Data Collection Project funded in FY02 and FY03 by continuing to enter information related to building permits issued in the District of Columbia between 1877 and 1949. The information will be entered into the database created under Phase I of the project.

   Individuals interested in submitting applications for the project listed under this solicitation do not require a non-federal matching share. Matching share requirements apply only to subgrant applicants.

The DCSHPO will also consider unsolicited applications for eligible projects not specifically identified above as program priorities. Subgrants may be awarded for unsolicited projects if funds are available and the project is appropriate for funding and consistent with other priorities identified in the DC Historic Preservation Program.

All grants will be reviewed using a standardized rating system based on the merits of the project, the ability of the applicant to complete the project, availability of funding, and distribution of project type and location. ANC's and community groups will be given the opportunity to comment on application submittals. Final grant award decisions will be made by the DC State Historic Preservation Officer and approved by the National Park Service. Letters of support from ANC's and neighborhood organizations will be factors considered during the review process.

An original and four (4) copies of the application and proposal must be submitted for each project proposed. Additional information on the grant application procedures and submission requirements can be obtained from the DC Historic Preservation Office at 801 North Capitol Street, NE, Suite 3000, Washington, DC 2002, or at 202-442-8800 (phone) or 202-535-2497 (fax).

DEPARTMENT OF HUMAN SERVICES

NOTICE TO ANNOUNCE FUNDS AVAILABILITY UNDER THE FAMILY VIOLENCE PREVENTION SERVICES GRANT

The Acting Director, Department of Human Services, pursuant to the requirements of Title IV B, Subpart 2 of the Social Security Act as amended, hereby announces the issuance of Request for Applications (RFAs) #3GF001 and the availability of federal grant funds under the Family Violence Prevention Services Grant. Applications are being solicited from qualified public or private non-profit agencies based in and primarily servicing target communities in the District of Columbia to provide:

- Public information and education campaign about domestic violence for Asian-American populations of the District of Columbia;
- Public information and education campaign about domestic violence for Latino populations of the District of Columbia;
- Public information and education campaign about domestic violence to an under-served racial, ethnic and/or special population of the District of Columbia other than the Latino or Asian American communities; and
- Direct one-on-one case management, counseling and advocacy for victims of domestic violence in the District of Columbia.

A grant award of approximately one hundred and eighty thousand dollars ($180,000) is the combined total available for fiscal year 2004 for the four (4) programs described above. One (1) grant will be awarded for each program. Agencies may apply for one (1) or all of the programs; however, separate submissions are required for each program. Interested applicants may obtain RFA packages between the hours of 9:00 a.m. and 4:00 p.m., beginning July 18, 2003, at the following location:

Family Services Administration, Room 208
2146 24th Place, N.E.
Washington, D.C. 20018
Attention: Barbara Strother, Grants Manager
Telephone No.: (202) 541-3957

A pre-application conference will be held on July 25, 2003, from 2:00 p.m. to 3:00 p.m. at the above address in the second floor Conference Room. Applications must be submitted to the location specified in the RFA no later than 4:45 p.m., EDT, on August 18, 2003. Please address any questions to Barbara Strother.

DC Commission on National and Community Service

Mini-grants Available to Support September 11th Youth Service Projects

(Washington, DC) - The DC Commission on National and Community Service (DC-CNCS) announces mini-grants up to $750 to support youth-led service projects on or around September 11th. The Freddie Mac One Day's Pay Grants are supported through the Freddie Mac Foundation.

One Day's Pay is a nationwide service initiative honoring those who lost their lives in the terrorist attacks on America. While One Day's Pay promotes service done by volunteers of all ages, the Freddie Mac One Day's Pay Grants will only support service projects that focus on youth involvement.

To be eligible for a mini-grant, applicants must be a nonprofit, school or university, community group, faith-based, corporation, government agency, or public organization. The youth-led service projects must address a community need in the District of Columbia on or around September 11th. A youth is defined as an individual under the age of 24, and youth should be included in all levels of planning. The deadline for completed applications is August 4, 2003.

A coalition of groups, including The Coalition of 9/11 Families, the Points of Light Foundation, Youth Service America, and Citizen Corps, is working to establish September 11th as a voluntarily observed national day of service and citizenship. To find out more information, or to pledge that you will dedicate a portion of that day to giving back to others, visit www.onedayspay.org.

The target of the Freddie Mac One Day's Pay Grant is to demonstrate community change through the service and leadership of youth in honor of those who lost their lives on September 11th.

Applicants are encouraged, but not required, to link their project(s) in some way to service-learning and emergency preparedness. Examples of such service projects include making and demonstrating sample "Go Kits" for emergency situations in your community, encouraging people to create "Go Kits" and emergency plans for their households, or creating "Go Kits" and distributing to people in need.

For further information, please contact Kimberly Flowers, DC-CNCS Outreach Coordinator, at (202) 727-9461 or Kimberly.Flowers@dc.gov

Freddie Mac One Day's Pay Grant Award 2003

Sponsored by

Target Outcome

To demonstrate community change through the service and leadership of youth in honor of those who lost their lives on September 11th.

One Day's Pay

One Day's Pay is a national, non-profit, public benefit corporation leading the effort to establish September 11th as a voluntarily observed national day of service. The mission is simple: to encourage people everywhere to set aside time on September 11th to help others in need. In this way, citizens can keep alive in memory and action, the spirit of giving and service that unified our nation following the terrorist attacks. One Day's Pay was founded in 2002 to honor those who lost their lives on September 11th. One Day's Pay is not affiliated with any charity or organization — its mission is to support all worthy causes. For more information, go to www.onedayspay.org.

Overview

To participate in One Day's Pay, plan a service project addressing a community need in the District of Columbia on or around September 11th. While One Day's Pay promotes service done by volunteers of all ages, the Freddie Mac Foundation and the DC Commission on National and Community Service (DC-CNCS) will award a One Day's Pay Grant only to organizations that focus on youth involvement. A youth is defined as an individual under the age of 24. **Mini grants up to $750 are available.**

Eligibility

To be eligible to receive a grant, applicants must:

- Be a nonprofit, school or university, community group, faith-based, corporation, government agency, or public organization. **Note: If you are an individual and are awarded the Freddie Mac Youth Service Grant, you are required to have a fiscal agent.**
- Complete and return the after-tracking form created and distributed by the DC-CNCS. (see application)
- Describe in the forms provided the proposed community service project and how it will empower local youth and make an impact in the District.

- Include a detailed budget. (see application)
- Invite residents from the local community and youth volunteers to participate in proposed community service project.
- Lead a community service project to be had in the District of Columbia on or around September 11th.
- Include youths on all levels of planning.

Please note: Applicants are encouraged, but not required, to link their project(s) in some way to service-learning and emergency preparedness. Examples of such service projects include making and demonstrating sample "Go Kits" for emergency situations in your community, encouraging people to create "Go Kits" and emergency plans for their households, or creating "Go Kits" and distributing to people in need.

Evaluation

Applications will be judged on the following criteria:

- ✓ Quality, effectiveness, and originality of proposed project
- ✓ Involvement of youth in planning, implementation, and evaluation of project
- ✓ Strategy to engage youth volunteers and community residents in project
- ✓ Capacity of person/organization to administer prospective grant

Judges for the mini-grant awards may include DC-CNCS staff, DC-CNCS Commissioners, and a representative from the Freddie Mac Foundation. This is subject to change.

Submission

THERE IS A STRICT DEADLINE OF 5 P.M. AUGUST 4, 2003 FOR ALL APPLICATION MATERIALS.

Mail or fax completed applications to:

DC Commission on National and Community Service
Freddie Mac One Day's Pay Grant
One Judiciary Square
441 4th St., NW, Suite 1040S
Washington, DC 20001
Fax: (202) 727-9198

Any additional materials that exemplify your commitment to youth and civic action in the District are welcome. This could include photographs from past projects, letters of recommendation from sponsors and/or participants, press clippings, etc. Note that these items will not be returned.

Grant Application

*Please type or print legibly and answer **all** questions. Incomplete or illegible applications will be disqualified.*

Part I. General Information

Full Name: _____ Title: _____

Agency or Organization: _____

Address: _____

City: _____ State: _____ Zip: _____

Email: _____

Business Phone: _____ Alternate Phone: _____

Part II. Proposed Community Service Project

- **Describe *in detail* your proposed community service project and answer the following questions:** What need(s) will your service project address and how will you accomplish your objectives? In what ways will you involve youth in the planning, implementation, and evaluation? What is your strategy to include community residents? How will your proposed community service project empower local youth and make an impact in the District? Will you include service-learning? In what way does your project connect to the events or outcomes of September 11th?
- Please **provide a budget** detailing how the grant funds will be used for your proposed community service project. If your anticipated expenditures total more than $750, please list your other funding sources.

ALL APPLICATION MATERIALS MUST BE RECEIVED BY 5 P.M., AUGUST 4, 2003.

Part III. Contract

If my organization receives a Freddie Mac One Day's Pay Grant, I understand that all funds will be made payable to my organization and are strictly for the uses agreed upon with DC-CNCS. I further understand that DC-CNCS retains the authority to make and award grants in its sole discretion. I am aware of the obligations expected of grantees and am prepared to see that my organization or I fulfill these requirements. Except where prohibited by law, I grant permission to the Freddie Mac Foundation and DC-CNCS to use my or my organization's name, photograph, or project for related publicity.

Applicant Signature/Title

_____/_____

Date _____

Guardian's Signature/Date (if applicant is under 18)

_____/_____

Phone:_____**Email**_____

ALL APPLICATION MATERIALS MUST BE RECEIVED BY 5 P.M., AUGUST 4, 2003.

If you have any questions regarding the Freddie Mac One Day's Pay Grant, please contact Kimberly Flowers at (202) 727-9461 or kimberly.flowers@dc.gov

The Next Step Public Charter School

Invitation to Bid

The Next Step Public Charter School will receive bids until Monday, August 11 at 3:00 pm for delivery of meals to students enrolled at the school. All meals must meet, but are not restricted to, minimum National School Breakfast and Lunch meal pattern requirements. Meal pattern requirements and all necessary forms may be obtained from:

Eimy Arias or Evie Frankl
The Next Step Public Charter School
1419 Columbia Rd., NW
Washington, D.C. 20009
202-319-2249 or 202-319-0434

Office of the Secretary of the
District of Columbia

July 1, 2003

Notice is hereby given that the following named persons have been appointed as Notaries Public in and for the District of Columbia, effective on or after August 1, 2003.

Adricula, Sylvia P.	Rpt	I F C 2121 Pa Ave,NW 20433
Bertola, Marta M.	Rpt	Modern Management Co 6925 4th St,NW 20001
Bonner, Tawnya L.	Rpt	Bryan Cave 700 13th St,NW 20005
Dick, Deanna J.	Rpt	McDermott Will Emery 600 13th St,NW 20005
Farris, Jay D.	Rpt	U.S. Attorney's Office 555 4th St,NW 20001
Floyd, Stacy A.	Rpt	Baker Botts 1299 Pa Ave,NW 20004
Gurevitch, Patricia	Rpt	Law Office/R. Scott Faley 5100 Wis Ave,NW#401 20016
Hall, Traci Fischer	Rpt	David F. Hall & Assoc 707 D St,SE 20003
Huddleston, Charles I.	Rpt	C & D Associates 901 6th St,SW 20024
Johnson, Deborah L.	Rpt	McDermott Will & Emery 600 13th St,NW 20005
Leary, Susan L.	Rpt	Karr & Allison 1920 N St,NW#300 20036

Logan, Judith G.	Rpt	Steptoe & Johnson 1330 Conn Ave,NW 20036
Murphy, Jill Seibert	Rpt	Bell Boyd & Lloyd 1615 L St,NW#1200 20036
Peters, Valerie E.	Rpt	Guerrieri Edmond Clayman 1625 Mass Ave,NW#700 20036
Ripperger, Robert	Rpt	Amer Fed of Teachers 555 N J Ave,NW 20001
Robertson, Ethel	Rpt	1250 Holbrook Terr,NE#4 20002
Robinson, Pamela M.	Rpt	D.C. Dept of Corrections 1901 D St,SE 20003
Velky, Alice J.	Rpt	Claxton Sale & Quinn 910 16th St,NW 5th Fl 20006
White, Marvel S.	Rpt	D.C. Teachers' F C U 9th & D Sts,NE 20002
Zebe, Donna J.	Rpt	Amer Hospital Assoc 325 7th St,NW 20004

SECRETARY OF THE
DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE
OFFICE OF THE SECRETARY
OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20001

Final Decision

Petition of: Vera Waltman Mayer, Coordinator
D.C. Coalition on Long-Term Care

Matter No: MCU 340126

Date: June 26, 2003

Arnold R. Finlayson, Esq., Director, Office of Documents and Administrative Issuances, participated in the preparation of this decision.

I. INTRODUCTION

The above-captioned matter, commenced pursuant to section 207(a) of the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001),[1] is before the Secretary of the District of Columbia upon Ms. Vera Waltman Mayer's (hereinafter the "petitioner") formal

[1] Pursuant to section 207(a) of the D.C.-FOIA, "[a]ny person denied the right to inspect a public record of a public body *may petition the Mayor* to review the public record to determine whether it may be withheld from public inspection." D.C. Official Code § 2-537(a)(emphasis added).

petition to the Honorable Anthony A. Williams, Mayor of the District of Columbia, to review the Department of Health's ("DOH") decision to deny her "access to the draft rules for the amended Medicaid waiver for home and community-based services."[2] Mayer Petition ¶ 1.

DOH denied the petitioner's request for access to the subject draft rules in a letter dated January 6, 2003 which, inter alia, cited D.C. Official Code § 2-534(a)(4) as the authority for the agency's decision. D.C. Official Code § 2-534(a)(4), which is commonly referred to as D.C.-FOIA Exemption 4, provides a statutory exception to the D.C. FOIA's broad information disclosure mandate.

Following a brief synopsis of the relevant background facts and procedural posture of this matter, and a general overview of the legal principles underlying the D.C.-FOIA, this decision considers the propriety of DOH's decision to withhold responsive records from disclosure to the petitioner pursuant to her D.C.-FOIA request.

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[2] Pursuant to Mayor's Order 97-177, dated October 9, 1997, the Secretary of the District of Columbia was delegated the authority vested in the Mayor to render final decisions on appeals and petitions for review under the D.C.-FOIA.

II. FACTUAL AND PROCEDURAL BACKGROUND

The petitioner is the coordinator of the D.C. Coalition on Long-Term Care ("Coalition") which is comprised of 22 membership organizations. The Coalition was formed to, inter alia, ensure that low- and moderate-income level citizens of the District of Columbia with chronic health care needs have quality long-term care options which they can afford.

On or about January 6, 2003, the petitioner submitted a D.C.-FOIA request to Sheryl Johnson of DOH in which she asked the agency to make publicly available a copy of a draft version of the proposed regulations to implement the waiver for home and community-based services for the elderly under the District's Medicaid program.[3]

In response to the petitioner's request, DOH, in a letter dated January 6, 2003 from the agency's attorney-adviser/FOIA officer, advised her that:

> The information you have requested is exempt from disclosure under D.C. Official Code, §2-534(a)(4). That provision exempts from disclosure under the FOIA "Inter-agency or intra-agency memorandum or letters which would not be available to a party other than an agency in litigation with the agency." The United States Supreme Court has held that exemption to encompass a "deliberative process privilege." NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151 (1975). This

[3] A copy of the petitioner's letter to DOH was not a part of the record before the Office of the Secretary.

> privilege is based on three policy purposes: (1) to encourage open, frank discussions on matters of policy, (2) to protect against premature disclosure of proposed policies before they are adopted, and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's actions. Russell v. Dept. of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982).

Letter dated January 6, 2003 from T. C. Collier to V. Mayer.

DOH's January 6, 2003 letter to the petitioner went on to explain as follows:

> The rules you have requested are in draft form only. They have not been reviewed for legal sufficiency by either the Office of the General Counsel of the Department of Health (DOH) or the Office of the Corporation Counsel. These rules, when in final form, will be published in the District of Columbia Register for public comment before they are officially adopted.

Id.

Dissatisfied with DOH's denial of her D.C.-FOIA request, the petitioner sought the instant administrative review by filing a petition with the Mayor in which she articulated the following reasons in support of the disclosure of the withheld information:

> The amended Medicaid waiver was approved by the Federal government in the summer of 2002 and by the District of Columbia Council in October 2002. The previous elderly Medicaid waiver has been in operation for four years without ever needing a rule-making procedure. There is no District or Federal law which requires this procedure for a Medicaid waiver.
>
> During the rule-making process, the Interim Medical Assistance Administration officials chose not to implement the amended Medicaid waiver despite its

great benefits to the poor and chronically ill individuals who would receive the services. In addition, it would provide cost savings to the District government and the entire community.

*** The Board [of Nursing] just held an open hearing to draft rules with the full participation of interested community members and other sections of the Department of Health. The result was excellent because it was based on broad knowledge and experience in the community and in the Department with the subject matter.

In addition, as the Coordinator of the DC Coalition on Long Term Care, I was asked by the previous Medical Assistance Administration officials, to organize and chair meetings of community members and government officials to revise guidelines/rule for the proposed new expanded Medicaid waiver program. Interested community leaders and experienced government officials shared their experience and thinking about the guidelines/rule.

I am especially interested in seeing the draft rules because the one provision which was revealed to me by the Interim Chief of the Office of Disabilities and Aging, contravenes the recommendation made by a consensus of the committee I chaired. The Committee agreed that there was no basis in fact or in law for that guideline. It is now imbedded in the proposed rules. There may well be other parts which our Committee studied and which will cause opposition. It would seem to me that it is better to have a discussion now than delay further implementation of this important program, too long awaited in the District.

* * * *

Mayer Petition ¶¶ 2-6.

III. DISCUSSION

A. GENERAL OVERVIEW OF THE D.C.-FOIA

The D.C.-FOIA, like the federal FOIA upon which it was

modeled, was enacted in 1976 to divest government officials of broad discretion in determining what, if any, government records should be made available to the public upon the receipt of a request for information. See Subcommittee on Administrative Practice & Procedure of the Senate Committee on Judiciary, 95th Cong., 2d. Sess., *Freedom of Information: A Compilation of State Laws* (Comm.Print 1978); see also Washington Post v. Minority Business Opportunity Commission, 560 A.2d 517, 521 (D.C. 1989). In this regard, the D.C.-FOIA was "designed to promote the disclosure of information, not inhibit it." Id.

The D.C.-FOIA embodies "[t]he public policy of the District of Columbia . . . that all persons are entitled to full and complete disclosure of information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531; see Donahue v. Thomas, 618 A.2d 601, 602 n.2 (D.C. 1992); Newspapers, Inc. v. Metropolitan Police Department, 546 A.2d 990, 993 (D.C. 1988); Barry v. Washington Post Company, 529 A.2d 319, 321 (D.C. 1987).

In order to accord full force and effect to the spirit and intent of the D.C.-FOIA, officials of District of Columbia public bodies are required to construe its provisions "with the view toward expansion of public access

and the minimization of costs and time delays to persons requesting information." D.C. Official Code § 2-531; see Washington Post, 560 A.2d at 521; Newspapers, Inc., 546 A.2d at 993. Thus, the policy underlying the D.C.-FOIA favors the broad disclosure of official records in the possession, custody or control of public bodies of the government of the District of Columbia, unless such records (or portions thereof) fall squarely within the purview of one or more of the nine categories of information which are expressly exempted from the disclosure mandate. See Washington Post, supra; Newspapers, Inc., supra. The nine statutory exemptions enumerated in the D.C.-FOIA, which protect certain types of confidential and/or privileged information from disclosure, "are to be construed narrowly, with ambiguities resolved in favor of disclosure." Washington Post, supra.

B. APPLICABILITY OF D.C.-FOIA EXEMPTION 4

Section 202(a) of the D.C.-FOIA provides that "[a]ny person has [the] right to inspect, and at his or her discretion, to copy *any public record* of a public body, *except as otherwise expressly provided by* § *2-534*." D.C. Official Code § 2-532(a)(emphasis added). Section 2-534 of the D.C. Official Code, conspicuously entitled "**Exemptions from disclosure**," in turn, enumerates the nine categories

of information which "*may* be exempt from disclosure under the provisions of [the D.C.-FOIA]." D.C. Official Code § 2-534(a)(1)-(9)(emphasis added).[4]

Taken together, sections 2-532(a) and 2-534 of the D.C. Official Code clearly and explicitly require the mandatory disclosure of all public records in the possession, custody or control of District public bodies, to the extent that such records (or any reasonably segregable portions thereof),[5] do not fall within the ambit of any of the nine statutory exemptions which protect certain categories of public records from disclosure. See Barry v. Washington Post Co., 529 A.2d 319, 321 (D.C. 1987)("The [D.C.-FOIA] provides for full disclosure unless the information requested is exempted under a specific statutory provision").

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[4] In the legal sense, the "use of the word 'may' in a statute ordinarily denotes discretion." In re Langon, 663 A.2d 1248 (D.C. 1995). Indeed, the federal FOIA has been interpreted by federal courts to permit agencies to make discretionary disclosures of records otherwise exempt under at least four of the exemptions to the federal FOIA. See Bartholdi Cable Co. v. FCC, 114 F.3d 274, 282 (D.C. Cir. 1997)("FOIA's exemptions simply permit, but do not require, an agency to withhold exempted information").

[5] D.C. Official Code § 2-534(b) provides, in pertinent part, that "[a]ny reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (a) of this section."

In the instant matter, DOH's Attorney-Adviser/FOIA Officer invoked D.C.-FOIA Exemption 4 to deny the petitioner's request for a copy of a draft version of the proposed regulations for the amended Medicaid waiver for home and community-based services.

D.C.-FOIA Exemption 4 protects from disclosure "[i]nter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency[.]" D.C. Official Code § 2-534(a)(4).

There is a dearth of case authority from the District of Columbia Court of Appeals discussing D.C.-FOIA Exemption 4 and, in the few discoverable published opinions, the court did not set forth the legal framework to be applied in analyzing the propriety of a District public body's decision to withhold records from disclosure in D.C.-FOIA Exemption 4 cases. However, under circumstances where, as here, a "statute is borrowed extensively from a federal statute, as the D.C.-FOIA was from the federal Freedom of Information Act . . . the decisions of the (federal) court of last resort are normally adopted with the statute." Donahue v. Thomas, 618 A.2d 601, 602 n. 3 (D.C. 1992) (quoting Lenaetts v. District of Columbia Dep't of Employment Services, 545 A.2d 1234, 1238 n.9 (D.C. 1988)).

Therefore, "except where the two acts differ, . . . case law interpreting the federal FOIA [is] instructive authority with respect to our own Act." Washington Post, supra, 560 A.2d at 521 n.5.

Like D.C.-FOIA Exemption 4, federal FOIA Exemption 5 shields from mandatory disclosure "[i]nter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency[.]" 5 U.S.C. § 552(b)(5)(1994 & Supp. IV 1998). According to the legislative history accompanying the federal FOIA, the purpose of federal FOIA Exemption 5 is to encourage the "frank discussion of legal and policy issues." S.Rep. No. 813, 89th Cong., 1st Sess. 9 (1965).

The construction and scope of federal FOIA Exemption 5 was at issue in the seminal United States Supreme Court case of EPA v. Mink, 410 U.S. 73 (1972). The court, after observing that federal FOIA "Exemption 5 creates an exemption for . . . documents only insofar as they 'would not be available by law to a party . . . in litigation with the agency,'" reasoned that the "language clearly contemplates that the public is entitled to all such memoranda or letters that a private party could discover in litigation with the agency." Id. at 86. Based on the legislative history accompanying the discussion of federal

FOIA Exemption 5, the court opined that "Congress intended to incorporate the recognized rule that 'confidential intra-agency advisory opinions . . . are privileged from inspection.'" Id. (quoting, Kaiser Aluminum & Chemical Corp. v. United States, 141 Ct. Cl. 38, 49, 157 F. Supp. 939, 946 (1958)). After noting that "the privilege that has been held to attach to intragovernmental memoranda clearly has finite limits, even in civil litigation," the court instructed that "[i]n each case, the question [is] whether production of the contested document would be 'injurious to the consultative functions of government that the privilege of nondisclosure protects.'" Id.

Following its decision in EPA v. Mink, the U.S. Supreme Court, in NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150, (1975), shed additional light on what kinds of "confidential intra-agency advisory opinions" Congress intended to fall within the purview of the disclosure protections of federal FOIA Exemption 5. In NLRB v. Sears, the court rationalized that:

> Since virtually any document not privileged may be discovered by the appropriate litigant, if it is relevant to his litigation, and since the Act clearly intended to give any member of the public as much right to disclosure with a special interest therein, . . . it is reasonable to construe [federal FOIA] Exemption 5 to exempt those documents, and only those documents, normally privileged in the civil discovery context.

Id. at 149 (internal citations omitted).

After construing federal FOIA Exemption 5 to exempt certain documents generally considered to be privileged in the context of civil discovery, the court next looked to the legislative history of the federal FOIA for guidance in determining the nature of the civil discovery privileges Congress intended to be within the scope of the subject provision. Based on the guidance it gleaned from pertinent remarks contained in the accompanying Senate and House Reports, the court concluded that it was clear that Congress had both the executive [deliberative process] privilege and attorney work product privilege "specifically in mind" upon enacting federal FOIA Exemption 5. Id. at 150, 154; accord Renegotiation Board v. Grumman Aircraft Engineering Corp., 421 U.S. 168, 184 (1975)(federal FOIA "Exemption 5 incorporates the privileges which the government enjoys under the relevant statutory and case law in the pretrial discovery context").

Following the U.S. Supreme Court's decisions in EPA v. Mink, Sears v. NLRB, and Renegotiation Board, the United States Court of Appeals for the District of Columbia Circuit, in several apposite cases, addressed the propriety of an agency's decision to invoke federal FOIA Exemption 5

to withhold materials from disclosure to the public based upon the claim that such information was protected under one or more of the well recognized civil discovery privileges. See Tax Analysts v. Internal Revenue Service, 117 F.3d 607, 616 (D.C. Cir. 1997)(deliberative process privilege, attorney-client privilege, and attorney work product privilege); Mapother v. Department of Justice, 3 F.2d 1533, 1537 (D.C. Cir. 1993)(deliberative process privilege); Access Reports v. Department of Justice, 926 F.2d 1192, 1194 (D.C. Cir. 1991)(deliberative process privilege); Formaldehyde Institute v. Department of Health and Human Services, 889 F.2d 1118, 1121 (D.C. Cir. 1989) (deliberative process privilege); Wolfe v. Department of Health and Human Services, 839 F.2d 768, 774 (D.C. 1988) (deliberative process privilege); Durns v. Bureau of Prisons, 804 F.2d 701, 703 (D.C. Cir. 1986)(attorney work product); Taxation with Representation Fund v. Internal Revenue Service, 646 F.2d 666, 676 (D.C. Cir. 1981) (attorney-client, attorney work product and deliberative process privileges); Mead Data Central Inc. v. Department of the Air Force, 566 F.2d 242, 252-57 (D.C. Cir. 1977) (attorney-client and deliberative process privileges).

As noted above, due to the paucity of binding D.C. Court of Appeals case precedent interpreting D.C.-FOIA

Exemption 4, the decisions of the U.S. Supreme Court and the D.C. Circuit interpreting the corresponding federal FOIA exemption provide authoritative guidance as to the proper construction to be given to the provision at issue. See Washington Post, supra.

Accordingly, the Secretary of the District of Columbia concludes that D.C.-FOIA Exemption 4 incorporates the well-recognized civil discovery privileges recognized by the U.S. Supreme Court and D.C. Circuit in the above-cited federal FOIA Exemption 5 cases, to wit: the deliberative process privilege, the attorney-client privilege, and the attorney work product privilege.

Having concluded that the common law pretrial discovery privileges are encompassed in D.C.-FOIA Exemption 4, it is necessary to determine whether the exemption was properly invoked by DOH to withhold a copy of the draft rules that are the focus of the petitioner's D.C.-FOIA request. In this regard, the pretrial civil discovery privilege under D.C.-FOIA Exemption 4 relied upon by DOH is the deliberative process privilege.[6]

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[6] Although DOH's response to the petitioner states that the proposed rules "have not been reviewed for legal sufficiency by either the Office of the General Counsel of the Department of Health (DOH) or the Office of the Corporation Counsel," there is nothing in the record to suggest that the attorney-client privilege is at issue. The

The deliberative process privilege rests "on the policy of protecting the 'decision making process of government agencies' . . . and focus[es] on documents 'reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.'" NLRB v. Sears, supra, 421 U.S. at 150. "Manifestly, the ultimate purpose of this long-recognized privilege is to prevent injury to the quality of agency decisions." Id. at 152.

It is axiomatic that an internal letter, memorandum, or other form of written communication is protected from disclosure under the deliberative process privilege if it is both "predecisional" in nature and "deliberative" in character. Mapother, supra, 3 F.3d at 1537; Petroleum Information Corporation, supra, 976 F.2d at 1434; Access

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attorney-client privilege protects both "confidential communications from clients to their attorneys made for the purpose of securing legal advice or services" and "communications from attorneys to their clients if the communications 'rest on confidential information obtained from the client.'" Tax Analysts, supra, 117 F.3d at 618 (quoting In re Sealed Case, 737 F.2d 94, 98-99 (D.C. Cir. 1984)). Nor does it appear that DOH is claiming the attorney work product privilege which "shields materials 'prepared in anticipation of litigation or for trial by or for [a] party or by or for that . . . party's representative (including the . . . party's attorney, consultant, . . . or agent).'" Id. at 620 (quoting FED.R.CIV.P. 26(b)(3)).

Reports, supra, 926 F.2d 1194; Formaldehyde Institute, supra, 889 F.2d 1121; Wolfe, supra, 839 F.2d 774; Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980).

A record in the possession, custody, or control of a public body is "predecisional" when it is "prepared in order to assist an agency decision maker in arriving at [a] decision," Renegotiation Board, supra, 421 U.S. at 184-85, such as "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." Coastal States, supra, 617 F.2d at 866. To the extent that a record maintained by a public body contains information that "reflects the give-and-take of the consultative process", it is of a "deliberative" character. Id. Generally, "[t]he deliberative character of agency documents can often be determined through 'the simple test that factual material must be disclosed but advice and recommendations may be withheld.'" Mapother, supra, 3 F.3d at 1537 (quoting Wolfe, supra, 839 F.2d a 774). Although the fact/opinion distinction "offers a quick, clear, and predictable rule of decision," Mead Data, supra, 566 F.2d at 256, it is not by any means a dispositive test. See Mapother, supra, 3 F.3d at 1537 ("fact/

opinion test . . . is not infallible and must not be applied mechanically"); Petroleum Information Corp., supra, 976 F.2d at 1434)("fact/opinion distinction . . . is not always dispositive"). As the D.C. Circuit has recognized, the "disclosure of even purely factual information may so expose the deliberative process within an agency that it must be deemed exempted" by federal FOIA Exemption 5. Mead Data, supra, 566 F.2d at 256.

The D.C. Circuit's "decisions on the 'deliberativeness' inquiry have focused on whether the disclosure of the requested material would tend to 'discourage candid discussion within an agency.'" Petroleum Information Corporation, supra, 976 F.2d at 1434 (citing Access Reports, 926 F.2d at 1195 (quoting Dudman Communications v. Department of Air Force, 815 F.2d 1565, 1567-68 (D.C. Cir. 1987)). Thus, the crucial inquiry in federal FOIA Exemption 5 cases is "whether the disclosure of materials would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions." Id. at 1568. A determination "that the privilege applies 'should therefore rest fundamentally on the conclusion that, unless protected from public disclosure, information of that type would not flow freely within the

agency.'" Tax Analysts, supra, 117 F.3d at 617 (quoting Mead Data, supra, 566 F.2d at 256).

An internal memorandum or other document drafted by a subordinate employee which is ultimately routed through the chain-of-command to a senior official with decision-making authority is likely to be a part of an agency's deliberative process because it will probably "reflect his or her own subjective opinions and will clearly have no binding effect on the recipient." Access Reports, supra, 926 F.2d at 1195. Conversely, an internal memorandum or other document which is prepared or approved by a senior official which flows down the chain-of-command to subordinate employees "is far more likely to manifest decisionmaking authority and to be the denouement of the decisionmaking rather than part of its give-and-take." Id.

Several federal court decisions have recognized that "draft" documents *may* be withheld from disclosure under the deliberative process privilege incorporated in federal FOIA Exemption 5. See Renegotiation Board, 421 U.S. 168, 184-85 (1975)("recommendations, *draft documents*, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer" held to be pre-decisional); Dudman Communications v. Department of the Air Force, 815 F.2d 1565, 1569 (court held that draft

manuscript was protected from disclosure under federal FOIA Exemption 5); Russell v. Department of the Air Force, 682 F.2d 1045, 1048-49(draft manuscript protected from disclosure); see also Department of Justice, FREEDOM OF INFORMATION ACT GUIDE & PRIVACY ACT OVERVIEW, 297 (May 2002)("A category of documents particularly likely to be found exempt under the deliberative process privilege is 'drafts' although it has been observed that such a designation 'does not end the inquiry.'")(and cases cited therein). The federal cases construing federal FOIA Exemption 5 are particularly instructive as to the proper interpretation to be given to the provisions of D.C.-FOIA Exemption 4.

Based on the logic of Renegotiation Board, Dudman Communications, and Russell, the Secretary of the District of Columbia concludes that the draft DOH rules sought by the petitioner were covered by the deliberative process privilege and, therefore, subject to exemption under the D.C.-FOIA.

The conclusion that the subject draft rules were within an exempt category of records, however, does not end this office's inquiry into the propriety of DOH's decision to deny the petitioner's request for the aforesaid document because the regulations which implement the D.C.-FOIA also

require public bodies to provide "a statement of the public interest considerations which establish the need for withholding the record." 1 DCMR § 407.2(b)(June 2001).

The apparent purpose of the aforesaid provision is to foster discretionary disclosures of otherwise exempt records as a matter of sound administrative discretion in the absence of a compelling countervailing public interest militating against the disclosure of such information.

Although DOH elaborated upon the policy purposes underlying the deliberative process privilege, the agency did not specifically address the public interest factors which, in accordance with 1 DCMR § 407.2(b), establish the need for the nondisclosure of the requested records. As a result, this office is unable to reach a decision on the merits of this matter.

Accordingly, it is necessary to remand this matter to DOH for further consideration in accordance with the instructions below.

IV. CONCLUSION

For all the foregoing reasons, this matter is remanded to DOH for a determination as to whether it is in the public interest to withhold a copy of the draft proposed regulations (or any reasonably segregable portion thereof) from disclosure to the petitioner.

On remand, DOH is directed to provide a written response to this office, with a courtesy copy to the petitioner, within seven (7) working days of its receipt of this decision.

DOH is further directed to provide a written certification to the Mayor within ten (10) working days indicating its compliance with this decision or the reasons for noncompliance with the directives herein.

This constitutes the final decision of the Secretary of the District of Columbia in this matter.

SHERRYL HOBBS NEWMAN, ACTING
SECRETARY OF THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

PUBLIC NOTICE

DESIGNATION OF COMPETITIVE AREAS

The Board of Directors of the District of Columbia Water and Sewer Authority ("the Board"), pursuant to the authority set forth in the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Code § 34-2201.01 *et seq.,*) formerly D.C. Code § 43-1661) and pursuant to Layoff and Recall regulations (Chapter 52, Section 5207, "LAYOFF AND RECALL", Subsection 5207.6 *et seq.* of the Water and Sanitation Regulations, (21 DCMR Section 5207) as amended and published in the January 18, 2002 edition of the District of Columbia Register (49 DCR 532) hereby publish the following designated departments as Lesser Competitive Areas for purposes of a reduction in force for the period from October 1, 2002 through September 30, 2004:

1. Customer Service
2. Engineering and Technical Services
3. Facilities and Security
4. Finance and Budget
5. Maintenance Services
6. Procurement & Materiel Management
7. Sewer Services
8. Wastewater Treatment
9. Water Services

Publication of this notice fulfills the requirement of Section 5207.6(d) of the Layoff and Recall regulations (21 DCMR Section 5207.6; (49 DCR 537), January 18, 2002) which requires that the Board of Directors publish the competitive areas in which the reduction in force will be conducted. This action was authorized by the Board of Directors in resolution number 03-45, dated July 3, 2003.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16965-A of 2914 11th Street, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the nonconforming structure provisions under subsection 2001.3, a variance from the lot occupancy requirements under section 403, and variances from the open and closed court requirements under section 406, to allow an addition to an existing apartment house in the R-4 District at premises 2914 11th Street, N.W. (Square 2853, Lots 813 and 858 per sub).

HEARING DATE: February 4, 2003
DECISION DATE: February 4, 2003 (Bench Decision)

CORRECTED SUMMARY ORDER

Note: BZA Order No. 16965, was issued with an incorrect final date of February 6, 2002. This order corrects the original order by showing the correct final date of February 6, 2003.

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1B, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 1B. ANC 1B submitted a letter in support of the application. The OP submitted a report in partial support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR § 3103.2. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 2001.3, 403, and 406, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the

public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED** subject to the following **CONDITION**:

1. Incorporate a curb line around the parking spaces along three sides of the parking lot (instead of the proposed car stops, as shown on the Site Plan, Sheet L.1).

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

VOTE: **5-0-0** (David A. Zaidain, Anne M. Renshaw, Curtis L. Etherly, Jr., Geoffrey H. Griffis, and John G. Parsons to approve).

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

FINAL DATE OF ORDER: February 6, 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. RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17014 of EastBanc, Inc., pursuant to 11 DCMR § 3103.2, for a variance from the building height requirements under section 770, a variance from the floor area ratio requirement under section 771, and a variance from the residential recreation space requirement under section 773, to allow the construction of a mixed-use (residential/retail) building in the C-2-C District at premises 2110 and 2150 M Street, N.W. (Square 71, Lots 11, 19, 21, 23, 26-28, 34, 801-806, 812, 816 and 817).

HEARING DATE: July 1, 2003
DECISION DATE: July 1, 2003 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2A, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 2A. ANC 2A submitted a letter in support of the application. The OP submitted a report recommending approval of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and Office of Planning reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 770, 771, 773, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED.**

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

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

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

FINAL DATE OF ORDER: JUL 0 2 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 § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17028 of RLA Revitalization Corporation and Donatelli & Klein, pursuant to 11 DCMR § 3103.2, for a variance from the building height requirements under section 770, a variance from the side yard requirements under section 775, and pursuant to 11 DCMR § 3104.1, a special exception for a reduction of parking spaces under section 2108, and a special exception from the roof structure requirements under section 411, to allow the construction of a new apartment house with ground floor retail, in the C-3-A District at premises 14th & Irving Streets, N.W. (Square 2848, All or portions of Lots 71, 824, 865, and 867, Square 2843, Lot 836, and portions of alley and street to be closed).

Note: The Applicant withdrew a request for variance relief from section 2201 (Off-Street Loading Requirements).

HEARING DATE: July 1, 2003
DECISION DATE: July 1, 2003 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1A, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 1A. ANC 1A submitted a letter in support of the application. The OP submitted a report in support of the application. The Department of Transportation submitted a report stating no objection to the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for special exceptions pursuant to 11 DCMR §§ 3104.1, 411 and 2108, and variances under 11 DCMR § 3103.2, from the strict application of the requirements of §§ 770 and 775. No person or entity appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the ANC and the Office of Planning reports filed in this case, the Board concludes that the applicant has met the burden of proof pursuant to 11 DCMR §§ 3104.1 for special exceptions under sections 411 and 2108, that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board also concludes that the applicant has met its burden of proof under 11 DCMR §§ 3103.2, 770 and 775, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that the application is **GRANTED**.

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

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

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

FINAL DATE OF ORDER: JUL 0 3 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 § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17029 of RLA Revitalization Corporation and Donatelli & Klein, pursuant to 11 DCMR § 3103.2, for a variance from the building height requirements under section 770, a variance from the residential recreation space requirements under section 773, and pursuant to 11 DCMR § 3104.1, special exception relief for a zone district boundary line crossing a lot under section 2514, a special exception for a reduction of parking spaces under section 2108, and a special exception from the roof structure requirements under section 411, to allow the construction of a new apartment house with ground floor retail, in the C-3-A and R-5-B Districts at premises 14th & Irving Streets, N.W. (Square 2672, All or portions of Lots 659, 660, 661, 662, 663, 664, 720, 721, 864, 865, 866 and 876, and the alley proposed to be closed).

HEARING DATE: July 1, 2003
DECISION DATE: July 1, 2003 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1A, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 1A. ANC 1A submitted a letter in support of the application. The OP submitted a report in support of the application. The Department of Transportation submitted a report stating no objection to the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for special exceptions pursuant to 11 DCMR §§ 3104.1, 411, 2108, 2514, and variances under 11 DCMR § 3103.2, from the strict application of the requirements of §§ 770 and 773. No person or entity appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the ANC and the Office of Planning reports filed in this case, the Board concludes that the applicant has met the burden of proof pursuant to 11 DCMR §§ 3104.1 for special exceptions under sections 411, 2108, and 2514, that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board also concludes that the applicant has met its burden of proof under 11 DCMR §§ 3103.2, 770 and 773, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that the application is **GRANTED**.

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

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

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

FINAL DATE OF ORDER: JUL 0 3 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 § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17009 of RWN Development Group, pursuant to 11 DCMR § 3104.1, for a special exception to allow an increase in building height from 40 feet to 50 feet under subsection 1402.1, and pursuant to DCMR § 3103.2, a variance from the residential recreation space requirement under section 773, to allow the conversion and enlargement of an existing commercial building into a 35-36 unit apartment house with ground floor professional and nonprofit arts uses in the RC/C-2-B District at premises 1700 Kalorama Road, N.W. (Square 2567, Lot 81).

HEARING DATE: May 13, 2003
DECISION DATE: June 3, 2003

DECISION AND ORDER

On March 5, 2003, RWN Development Group filed an application with the Board of Zoning Adjustment (BZA) seeking a special exception and a variance in connection with the development of a new apartment building at 1700 Kalorama Road, N.W. The BZA, at its June 3, 2003 public meeting, after discussion and deliberation on the application approved the application by a vote of 5-0.

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. By memorandum dated March 7, 2003, the Office of Zoning provided notice of filing of the application to the District of Columbia Office of Planning, the affected Advisory Neighborhood Commission (ANC 1C) and Single Member District Commissioner, and the Ward 1 Council Member. Exhibit Nos. 12, 13, 14 and 15.

The BZA scheduled a hearing on the application for May 13, 2003. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on March 13, 2003, mailed the Applicants, the owners of all property within 200 feet of the subject property, and ANC 1C notice of hearing. Exhibit Nos. 17, 18 and 19. Notice of hearing was also published in the D.C. Register. The Applicants filed an Affidavit of Posting, which indicates that the property was posted properly. Exhibit No. 24.

Request for Party Status. Gloria and Emmark Brown (the "Browns"), the owners of a property at 2316 17th Street, N.W., which abuts Applicant's property on 17th Street, each separately requested party status. Exhibit Nos. 22 and 23. The Browns requested that the BZA deny the application. The BZA asked whether the

Browns were related and living at the same address, and if so, whether these two requests for party status could be consolidated into one request. The Browns answered that they are related but that they preferred that their requests for party status remain separate because they had different reasons for opposing the project. The Applicants had no objection to the granting of the request for party status. The BZA voted unanimously to grant the request for party status to the Browns.

Persons in Opposition to the Application. No other person other than the Browns expressed opposition to the application.

Self-Certified Application. The Applicants filed a Self-Certified BZA Application, Exhibit No. 7, seeking a special exception pursuant to 11 DCMR § 3104.1 and 11 DCMR § 1402.1, and a variance pursuant to §§ 3103.02 and 773.3.

Authorization. Cynthia A. Giordano, Esquire, an attorney and a member of the District of Columbia Bar, represented the Applicants at the public hearing. Richard Naing, a principal with RWN Development Group, was also in attendance at the meeting, as was the Applicants' D.C. licensed architect, Phil Esocoff.

DC Office of Planning (OP) Report. OP filed a report recommending approval of the application. Exhibit No. 26. The report was received in the Office of Zoning on March 11, 2003. OP's report and its testimony at the hearing identified the base zoning of the subject property as C-2-B which permits both residential and mixed-use development. OP stated that the property is subject to the Reed Cooke ("RC") overlay zone which was designed to protect existing housing and encourage affordable housing uses as well as compatible and community serving nonresidential uses. OP's rationale for recommending approval of the application was that approval would: (1) allow residential development that is compatible with existing uses; (2) bring new residences to the area; and (3) meet the intent of the Zoning Regulations. OP recommended that the BZA approve the special exception and variance requested with the condition that the applicant provide a covenant for the provision of low and moderate income housing. More specifically, with respect to the special exception, OP indicated that pursuant to Section 1403.1 of the Zoning Regulations the application would have to meet certain conditions. OP opined that the project met all of the conditions as follows:

> It advances the purposes of the RC Overlay by providing new housing and non-residential uses that serve the local community.

Existing ingress and egress, which will be retained, have functioned efficiently. Pedestrian access will be separated and will not conflict with vehicular access.

The project substantially exceeds the parking requirements provided by the Zoning Regulations and should be more than adequate to meet need.

The proposed project seeks to convert a commercial building to predominately residential use, rendering it more compatible with adjacent residential zones and uses.

The proposed project is not expected to have any adverse noise impacts.

The proposed uses will not include any outdoor storage of materials, nor outdoor processing, fabricating or repair.

Even with the proposed additional height, the overall size and scale of the project will be within that permissible in the underlying zone. The area that exceeds the 40 foot height limit is a small portion of the building to the rear of the project and will not affect neighboring properties. The proposed uses will be more beneficial to the neighborhood than the prior office use which offered limited security and activity on the site in the evening.

With respect to the residential recreation space variance, OP indicated that the subject property is unique due to the shape of the lot and the fact that most of the building is being converted from commercial to residential use. Providing the full requirement of recreation space would reduce the amount of residential space provided. OP was of the opinion that the amount of space provided will adequately serve the residents and is therefore consistent with the intent of the Zoning Regulations. OP also noted that the Reed-Cooke Neighborhood Association voted on April 8, 2003 to support the requested special exception and variance requests.

Advisory Neighborhood Commission (ANC) Report. By correspondence dated May 6, 2003 (Exhibit No. 25), ANC 1C recommended approval of the application stating that the development conforms to the requirement under the Reed-Cooke Overlay of making 50% of additional units affordable and that the Applicant had conducted community outreach and responded to community concerns. ANC 1C's report indicated that proper notice of their meeting was duly given, and that the resolution to support the application was adopted at a public meeting on April 2, 2003 by a vote of 7-0 with 1 abstention.

Closing of the Record. Upon hearing the Applicants' case, reviewing the recommendations of the Office of Planning and the Browns' opposition, the BZA closed the record but for the following additional submissions:

A. From the Applicants:

(1) a proposed covenant regarding the details of the Applicant's commitment for the proposed low-moderate-income units;

(2) exhibits showing the impact of the proposed special exception height increase on the adjacent Brown residence; and

(3) a summary of the facts of the case.

B. From the Browns'

(1) any response to the Applicant's submissions above.

Post Hearing Submissions. The Applicant submitted an outline setting forth standards for regulating the pricing, sale/lease, and resale/release of the affordable housing component. The standards were based upon standards formulated by another developer with input from OP and DHCD for an affordable housing component included in a recent PUD case. The Applicant also submitted photos and site plans demonstrating that the proposed height increase to 50 feet will not impact the Brown residence because the increase will only be applied for a portion of the site which is not adjacent to the Brown property. Exhibit No. 31. However, "Attachment C" of Exhibit No. 31 described mitigating improvements (i.e., treatment of building wall adjacent to the Brown residence and landscaping) which the Applicant stated it is willing to implement to improve the impact of the matter-of-right height increase. No post hearing submission in response to the Applicant was made by the Browns.

Decision. The BZA approved the special exception and variance requests with conditions as described below at its June 3, 2003 meeting.

SUMMARY OF EVIDENCE:
The Applicants' Proposal

The subject application is for special exception pursuant to Sections 1402.1 and 3104 to allow a height of 50 feet for the conversion and enlargement of an existing commercial building into a 35-36 unit apartment house with ground level professional and nonprofit arts uses at 1700 Kalorama Road, N.W. (Square 2567, Lot 81, the "Property"). A variance to reduce the amount of residential recreation space required from 15% to 5.8% is also requested pursuant to § 3103.

The requested special exception seeks an increase to 50 feet on a portion of the existing improvements. The height increase will result in one or two additional residential units and approximately 1,350 square feet of low-moderate income housing in the project. The requested variance seeks to reduce the residential recreation space requirements from 15% to 5.8%.

OPPOSITION:

The only opposition to the application was presented by Gloria and Emmark Brown. Gloria Brown lives at 2316 17th Street, N.W. which is located adjacent to the subject property on 17th Street. The Browns expressed concern that the proposed height increase would reduce light and air to their property.

Second, the Browns argued at the hearing that the proposed height increase would adversely impact their views to the west.

FINDINGS OF FACT:

1. The property is zoned RC/C-2-B -- a medium-density, mixed-use zone with a maximum height of 65 feet and a maximum density of 3.5 FAR for residential or mixed uses, (1.5 FAR for commercial uses). The Reed-Cooke overlay zone, as set forth in 11 DCMR Chapter 14, modifies the base zoning by enumerating a list of prohibited uses and by establishing a height limit of 40 feet. The permitted height restriction may be increased up to 50 feet as a special exception, provided that one-half of the additional density is devoted to affordable housing units.
2. The subject lot size is irregularly shaped. The existing improvements on subject property consist of a two-story office building with a two-level, open-air parking structure at the rear on a lot having 22,004 square feet of land area. The office building is an industrial-design masonry structure with an irregular shape that follows the extreme acute angle formed by the intersection of 17th Street and Kalorama Road, N.W. The existing improvements already maximize current lot occupancy requirements 80% leaving little opportunity to provide recreation space on the lot.
3. The proposed development consists of a conversion to residential apartments with a two-story matter-of-right addition on top of the main building and a small, oval-shaped, two-story residential addition over the parking garage. Only the addition on the parking garage is proposed to extend to 50 foot height pursuant to the special exception relief requested. The height of the main structure will not exceed the 40 foot matter-of-right standard. To mitigate any adverse impacts of the matter-of-right height increase on the adjacent Brown residence, the

Applicant agreed to make the improvements described in Attachment "C" to Exhibit No. 31.

4. The ground floor space will be occupied by "Sitar," a well-respected nonprofit arts center already located in the neighborhood and Lynne Israel and Associates, a professional service use which provides occupational therapy to children.

5. With the requested height increase, an additional residential gross floor area of approximately 2,936 square feet can be added. A net increase of two units with 1,350 square feet each is obtained with the increase. Pursuant to Section 1402.1, the equivalent of 50% of this additional area (or approximately 1,350 net square feet) must be devoted to low and moderate income housing in the project. The Applicant committed to provide this space in one large unit or two smaller units, hence the 35-36 unit range for the project as a whole. Further, the Applicant proffered that the sale and resale of the unit(s) will be conducted in accordance with the program outlined in the Applicant's post-hearing submission. (Exhibit No. 31)

6. The proposed height increase will not have a negative impact on neighboring properties. The proposed height increase is located on the rear portion of the lot, not adjacent to the Brown residence. As a result, it will not impact the Browns' light and air or their views to the west.

7. The provision of 1,350 square feet of affordable housing in the Reed-Cooke area which is experiencing a ware of redevelopment and gentrification will advance the purposes of the Reed-Cooke overlay zone.

8. The existing building has an unusual configuration and a large footprint which already maximizes current lot occupancy standards. As a result, limited space on the ground level is available for outdoor recreation space. Further, because of the unusual shape of the building, the rooftop cannot accommodate all of the required amount and also meet the minimum width requirements required for rooftop recreation space. Instead, the Applicant is proposing to provide two common area rooftop decks totaling 3,036 square feet (5.8%) and to divide and allocate the remaining, unobstructed rooftop area for private rooftop decks. The standard in the Zoning Regulations is for recreation space equal to fifteen percent (15%) of the residential gross floor area of the building.

9. With the proposed variance, 13 units will have a private rooftop garden. Fifteen units will also have balconies (including some of the units with rooftop gardens). Only eight of the 35-36 total units will have neither a terrace nor a balcony, thereby minimizing the need for additional recreation space beyond the proposed 5.8%. The 5.8% provided will adequately meet the needs of the building residents.

10. It would be an undue hardship to provide additional recreation space inside the project where its benefits to building residents will be limited and the burdens

associated with managing and maintaining the space will be a detriment to the building residents. Rather, the Applicant proposed to devote this space to residential use and additional ground floor space for the Sitar School. Such utilization is more in keeping with the purposes of the Reed-Cooke zoning than a function room that will rarely be used. The relatively small size of the project and the benefit of maximizing the amount of the residential and community-serving nonprofit space support the Applicant's proposal to reduce the recreation space component.

11. The number of parking spaces will exceed that required by the Zoning Regulations. By providing adequate parking in this parking-deficient neighborhood, the project helps alleviate a current problem condition in the neighborhood. Further, the intensity of existing use of the site is being substantially reduced because the Applicant is converting the building from office to residential use. The previous office use generated a high level of commuter vehicle trips during peak morning and evening traffic periods. With the proposed conversion, a much smaller number of automobiles will be used in these periods by residents, a higher percentage of whom will walk or take public transit to work.

CONCLUSIONS OF LAW AND OPINION:

The Special Exception

The BZA is authorized under § 8 of the Zoning Act, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code §§ 6-641.07(g)(2) and (3) (2002)), to grant special exceptions from the Zoning Regulations. The Applicant is seeking a special exception pursuant to § 3104.1 and under 1402.1 to allow a height increase to 50 feet over a small portion of matter-of-sight development. The notice requirements of § 3113 for the public hearing on the application have been met. The Applicant is also seeking variance from the residential recreation space requirements set forth in Section 773.

The Applicants were required to demonstrate that the proposed height increase meets all of the conditions set forth in Section 1403.1 and that it will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely, the use of neighboring properties in accordance with the Zoning Regulations and Zoning Maps. Based upon the findings of fact, the BZA concludes that the application does meet the requirements for approval of the requested height increase.

The BZA gave "great weight" to the recommendation of the Office of Planning and agrees with OP that upon due consideration to the subject property's zoning, the intensity of use, the character of the neighborhood and the standards for special

exception, the proposed height increase meets the required tests and can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. The BZA determined to make as a condition of approval the implementation of the guidelines submitted by the Applicant for the pricing, sale/lease, and long-term disposition of the low-moderate income units. (Exhibit 31).

The BZA further determined that proposed height is unlikely to impair the use and enjoyment of the Browns' property.

The BZA is of the opinion that § 1402.1 of the Zoning Regulations was developed to maintain and expand the existing housing stock and to ensure a greater variety of housing types, opportunities and choices. The BZA determined that the Applicants meet and satisfy each of the requirements of § 1402.2.

In reviewing BZA cases, the BZA is required under D.C. Code § 1-309(d) (2002) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. ANC 1C stated that the application conforms to the requirements of the Reed-Cooke overlay and that the Applicant conducted community outreach and responded to community concerns. The BZA has carefully considered ANC 1C's report and gives great weight to the ANC's recommendation to approve the application.

Based on the findings of fact and having given great weight to the ANC and OP reports, the BZA concludes that the special exception will not materially impair the intent and purpose of the Zoning Regulations, adversely affect the light and air of adjacent buildings or significantly increase traffic or noise. The BZA concludes that the requested special exception relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not affect adversely the use of neighboring properties.

The Variance

The Board is authorized to grant a variance from the strict application of the zoning regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...." D.C.

Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2. Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." *Id.* An applicant for an area variance must make the lesser showing of "practical difficulties," as opposed to the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case, therefore, had to make three showings: uniqueness of the property, that such uniqueness results in "practical difficulties" to the Applicant, and that the granting of the variance would not impair the public good or the intent and integrity of the zone plan and regulations.

The Applicant proffered that the site is an irregular shape with a sloping condition and that these conditions together with the existing improvements, which also feature an unusual configuration, make it difficult and impractical for the required amount of residential recreation space to be provided on the roof in accordance with the minimum width requirements for such space. Moreover, the Applicant indicated that the provision of recreation space inside the building was impractical for a project of this size and would burden future condo owners who would be responsible for maintaining and managing it. The Board concurs with the Applicant's assessment of the uniqueness of the property and the resulting difficulty in providing the required amount of recreation space.

OP also recommended that the variance be granted, citing the shape of the lot and the unusual and difficult development objective of converting an older industrial/commercial building to residential use. OP opined that granting the variance will not impair the intent, purpose or integrity of the Zoning Regulations. OP noted that requiring the full 15% requirement would reduce the amount of residential space provided in the project and that the 5.8% being provided will adequately serve the residents, particularly in view of the fact that so many units will have access from their units to private rooftop gardens and balconies. The Board concurs with the OP recommendation.

For the reasons stated above, the BZA concludes that the Applicants have met their burden of proof with respect to both the special exception and variance requests. It is hereby **ORDERED** that the application is **GRANTED** with the following conditions:

(1) The project will be developed substantially in accordance with the plans submitted by the Applicant and reviewed by the Board at the public hearing on the application (Exhibit 28).

(2) The Applicant shall provide 5.8% residential space in two rooftop decks as shown in Exhibit 28.
(3) The Applicant provide a minimum of 1,350 square feet of affordable housing in the project in accordance with the guidelines set forth in the Applicant's post-hearing submission (Exhibit 31).

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., Carol J. Mitten, 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: JUL 0 7 2003

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.
PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17027 of Emergence, Inc., pursuant to 11 DCMR § 3104.1, for a special exception to allow a community service center under section 334, in the R-4 District at premises 731-733 Euclid Street, N.W. (first and second floors) (Square 2884, Lot 836).

HEARING DATE: July 1, 2003
DECISION DATE: July 8, 2003

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) 1B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B 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 a special exception under §§ 334. No persons or entities 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, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, and 334, that the requested relief can be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

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

VOTE: **5-0-0** (Geoffrey H. Griffis, David A. Zaidain, Ruthanne G. Miller, Curtis L. Etherly, Jr., and James H. Hannaham by proxy to grant).

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

FINAL DATE OF ORDER: JUL 0 8 2003

UNDER 11 DCMR 3103.1, "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, 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. 17031 of James Millward and Madhulika Sikka, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirement under section 403, and a variance from the rear yard requirement under section 404, to allow the construction of a deck at the rear of a single family row dwelling in the R-4 District at premises 2767 Woodley Place, N.W. (Square 2206, Lot 124).

HEARING DATE: July 8, 2003
DECISION DATE: July 8, 2003 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

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

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

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

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

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

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

FINAL DATE OF ORDER: JUL 0 8 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 § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17033 of Washington Drama Society, Inc. dba The Arena Stage, pursuant to 11 DCMR § 3103.2, for a variance from the building height requirements under section 930, to permit the redevelopment of an existing theater in the W-1 District at premises 1101 6th Street, S.W. (The applicant requests a modification to the height variance approved in BZA Order No. 16933-A) (Square 472, Lots 123 and 126).

HEARING DATE: July 8, 2003
DECISION DATE: July 8, 2003 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2D, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 2D. ANC 2D submitted a letter in support of the application. The OP submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and, 930, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED** with the following provision:

1. The Applicant may modify the design of the building as may be approved by the Historic Preservation Review Board and/or the Commission of Fine Arts, provided that those changes do not increase any of the areas of relief granted by the Board of Zoning Adjustment.

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

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

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

FINAL DATE OF ORDER: July 8, 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 § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL

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

RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17036 of Stephen and Meredith Peterson, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to a single-family row dwelling under section 223, not meeting the lot area and width requirements (section 401), the lot occupancy requirements (section 403) and the rear yard requirements (section 404), in the R-3 District at premises 1247 35th Street, N.W. (Square 1221, Lot 73).

HEARING DATE: July 8, 2003
DECISION DATE: July 8, 2003 (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) 2E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. ANC 2E 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 a special exception under § 223. No persons or entities 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 and the ANC, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

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

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

FINAL DATE OF ORDER: July 8, 2003

UNDER 11 DCMR 3103.1, "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,

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

Zoning Commission Order No. 02-43
Case No. 02-43/00-02
(PUD Map Amendment – MedStar Health)
February 24, 2003

Pursuant to notice, public hearing of the Zoning Commission for the District of Columbia was held on January 9, 2003, to consider the application of MedStar Health, Inc. ("MedStar" or the "Applicant"). The application requested final (second-stage) review and approval of a planned unit development ("PUD") and related map amendment to SP-1 and SP-2 for all of the area of Square 3129 that is zoned R-5-A, pursuant to Chapter 24 and § 102, respectively, of the District of Columbia Municipal Regulations ("DCMR"), Title 11 Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission grants second-stage approval with conditions.

FINDINGS OF FACT

1. On November 4, 1999, MedStar filed an application requesting a map amendment rezoning all of the area within Square 3129 that is zoned R-5-A, a flexible multi-family residential classification, (the "Site" or "PUD Site") to SP-1 and SP-2, medium-density and medium-high-density districts, respectively. The Site is part of Lot 2 in Square 3129 and contains approximately 1,460,851 square feet or 33.53 acres of land area.

2. MedStar filed an application with the Zoning Commission requesting final (second-stage) approval of a PUD and a related map amendment for the PUD site from a Zone District classification of R-5-A to the Zone District classifications of SP-1 and SP-2. The application was assigned Zoning Commission Case No. 02-43 (the "Second-Stage Case") by the Office of Zoning.

3. The Zoning Commission previously granted preliminary (first-stage) approval of the PUD and related map amendment changing the Zoning Map designation of the PUD Site from a Zone District classification of R-5-A to the Zone District classifications of SP-1 and SP-2, subject to certain guidelines, conditions, and standards. Zoning Commission Order No. 969, dated October 17, 2002, reflects the Zoning Commission's decision on that application ("First-Stage Order").

4. Square 3129 contains numerous medical facilities, including the Washington Hospital Center, The National Rehabilitation Hospital, The Children's Hospital National Medical Center, and the Veterans Affairs Medical Center.

5. Lot 2, a portion of which is the subject of this application, is occupied by the Washington Hospital Center and The National Rehabilitation Hospital. The remaining portion of Lot 2 was rezoned by Zoning Commission Order No. 784 (September 11, 1995), in which the Commission approved a PUD and related map amendment to allow the construction and use of the Physicians' Office Building, certain adjunct hospital related facilities, and a parking structure. That PUD also approved a rezoning from R-5-A to SP-1 of approximately 238,928 square feet of land (5.48 acres), which was used predominantly for surface parking. All other areas of Lot 2 remained in the R-5-A district.

6. The Site is located in the northwest quadrant of the District of Columbia and is bounded by Irving Street to the north, Michigan Avenue to the south and west, and First Street to the east. Directly to the north and south of the Site are government facilities that are unzoned, including the United States Armed Forces' and Airmen's Home to the north, the Veterans Administration Hospital to the east, and the Macmillan Reservoir and (old) Sand Filtration site to the south. The reservoir property is operated by the U.S. Army Corps of Engineers. The old Sand Filtration site is owned by the Government of the District of Columbia. The Site slopes approximately fifteen (15) feet from the northwest to the southeast and is forty percent (40%) occupied by buildings and structures, thirty-one percent (31%) paved, and twenty-nine percent (29%) open space.

7. The R-5-A district permits matter-of-right single-family detached and semi-detached dwellings, and, with the approval of the Board of Zoning Adjustment, low-density development of general residential uses including row houses, flats, and apartments to a maximum density of 0.9 floor area ratio ("FAR"), a maximum lot occupancy of forty percent (40%), and a maximum height of three (3) stories/forty (40) feet.

8. The SP-1 district permits matter-of-right, medium/high-density development, including all kinds of residential uses and office development, both to be compatible with surrounding properties, to a maximum height of sixty-five (65) feet, a maximum density of 4.0 FAR for residential use and 2.5 FAR for other permitted uses, and a maximum lot occupancy of eighty percent (80%) for residential uses.

9. The SP-2 district permits matter-of-right, medium/high-density development, including all kinds of residential uses and office development, both to be compatible with surrounding properties, to a maximum height of ninety (90) feet, a maximum density of 6.0 FAR for residential use and 3.5 FAR for other permitted uses, and a maximum lot occupancy of eighty percent (80%) for residential uses.

10. The Applicant assembled and submitted a "Master Plan 2000" for its campus, including the Site, upon which it based its application for the map amendment. That document sets forth the history of the medical uses on the Site; the current zoning scheme; the development objectives of the Applicant for a fifteen- (15) year period; the methodology that was used to assemble the Master Plan 2000; a description of the streets, buildings, topography, political jurisdictions, and comprehensive plan land use designations, adjacent planning considerations, and adjacent zoning considerations; a public and bicycle transportation plan; an assessment of public transportation and bicycle routes; an explanation of existing conditions and a discussion of the programmatic and space needs of the hospital; development guidelines; a discussion of planning alternatives; floor plans; landscape plans; design illustrations, signage plans, circulation, and way-finding designs; and an implementation schedule for the proposed development.

11. The implementation sequences are described as Phase I (the Emergency and Intensive Care Unit addition); Phase II (Laboratory and Administrative addition); Phase III (the Radiology and Mechanical Equipment addition); Phase IV (the Cancer Institute Expansion); Phase V (the addition to the East Building); and Phase VI (the Southeast Complex). Master Plan 2000 suggests three (3) zoning alternatives, labeled "A," "B," and "C". Of these, the Applicant seeks approval, through the PUD process, of Zoning Strategy B which is described at Figure 6.6c of Master Plan 2000. The land area proposed for rezoning to the SP-1 district contains 623,866 square feet. The existing floor area amounts to 537,657 square feet. Rezoning this parcel to SP-1, which has a maximum density of 1.9 FAR, will result in a maximum building floor area of 1,185,345 square feet to a maximum permitted height of sixty-five (65) feet.

12. The land area proposed for the SP-2 district contains 836,985 square feet. The existing floor area on that parcel is 902,972 square feet. Thus, the maximum 3.4 FAR permitted in the SP-2 district under Zoning Strategy B would permit additional floor area of 1,942,792 square feet to a maximum height of ninety (90) feet. Thus, the approval of Zoning Strategy B will result in a maximum total building floor area of 2,845,749 square feet of building space to be used primarily for the medical services and related uses described in Master Plan 2000.

13. On January 25, 2001, MedStar formally adopted Master Plan 2000 as its development guide for the period 2001 to 2020.

14. During the first-stage process, the Applicant submitted a transportation impact analysis, which discusses peak hour traffic counts, roadway capacities under the existing zoning, trip generation rates under the existing zoning and roadway configuration, and trip generation capacities under the proposed rezoning. This study concluded that three (3) of the nine (9) intersections within the immediate vicinity of the Site operated at less than acceptable levels of service, and the existing parking supply is "somewhat inadequate." However, the report goes on to recommend improvements to those three (3) intersections and concludes that

the increased parking supply proposed in the Master Plan 2000 will increase the parking supply to an adequate level.

15. The Applicant testified that it was in discussions with the District Department of Transportation ("D-DOT") to formalize an Agreement to improve nearby roadway capacities and efficiencies. By this proposed agreement, MedStar would provide partial funding for certain roadway improvements that are deemed appropriate and necessary to resolve the intersection and parking supply deficiencies associated with the proposed development plan.

16. Christine Swearingen, MedStar's Senior Vice-President, testified that MedStar is the largest health care system in the Baltimore-Washington region. It consists of seven (7) hospitals, more than 3,000 licensed beds, 22,000 employees, and 4,000 affiliated positions. In Washington, D.C., MedStar operates the Washington Hospital Center, The National Rehabilitation Hospital, Georgetown University Hospital, the Visiting Nurses Association, and MedStar Manor at Lamond Riggs. The Washington Hospital Center was founded in 1958 at its current location as a result of the merger of the old Garfield Memorial Hospital; the Episcopal Eye, Ear, and Throat Hospital; and the Central Dispensary and Emergency Hospital. The Washington Hospital Center is now the District of Columbia's largest health care facility providing the largest number of inpatient/outpatient and emergency services for the residents of the District of Columbia, especially for residents who live east of Rock Creek Park.

17. Ms. Swearingen testified that the developments proposed under Master Plan 2000 were critical to alleviate crowded and cramped facilities, to renovate substandard facilities to modern standards, to replace obsolete facilities, and to improve access to facilities and service areas within the Washington Hospital Center campus. She stated that the density limitations of the existing residential zoning (0.9 FAR) accord the Washington Hospital Center no further latitude to expand facilities. The hospital campus is built to the capacity of the existing R-5-A zoning envelope. She testified further that it is extremely unlikely that the Site would ever be used for the residential purposes for which it is zoned.

18. Clarence Brewton, Jr., MedStar's Vice-President of Regulatory Compliance and Community Development, testified that MedStar held meetings with neighboring residents, its patients, its institutional neighbors, Advisory Neighborhood Commissions, civic and citizens associations, community leaders, elected officials, and oversight agencies to create and comment upon Master Plan 2000. MedStar also surveyed 21,000 households and incorporated those summary views into its Master Plan 2000.

19. Albert G. Dobbins, III, of A.G. Dobbins & Associates, a planning consultant who was recognized as an expert in planning and zoning by the Commission, testified that the proposed rezoning from R-5-A to SP-1 and SP-2 is not inconsistent with the comprehensive plan, supports the theme of the National Capital Planning

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Commission's ("NCPC") Extending the Legacy Plan, is in harmony with the surrounding uses and zoning, and is consistent with the past and present uses of the Site and the zoning regulations.

20. Gerald Oudens, of Oudens & Knoop Architects, recognized by the Commission as a expert in planning and zoning, testified to the site development history, the planning methodology of Master Plan 2000, the existing conditions on the Site, functional issues, vehicular access issues, landscaping, the major space needs of the hospital, the gross floor area needs, the development plan objectives, the proposed development plan, and the proposed zoning and phased construction schedule. The specifics of his testimony are included in Master Plan 2000 and in slides submitted into the record by the Applicant on March 15, 2001. (Exhibit Number 20C)

21. Osborne George, of O.R. George & Associates, who was recognized by the Commission as an expert on traffic and parking, testified to MedStar's current site access needs and their impacts on the transportation and parking infrastructure with respect to the proposed development outlined in Master Plan 2000. He also discussed the roadway and parking usage under both the current and the proposed development and the improvements needed at critical intersections to reasonably accommodate MedStar's development plan. The recommended improvements included intersection improvements at Irving and First Streets, N.W., First Street and Michigan Avenue, N.W., and at Michigan Avenue east and west of the Children's Hospital Building. With these improvements, Mr. George concluded that the rezoning and development of the Washington Hospital Center campus site could be undertaken as proposed, without an adverse impact to area roadways.

22. The D.C. Office of Planning ("OP") submitted a report in support of the first-stage application conditioned upon the approval of a letter agreement regarding roadway improvements between MedStar and the D.C. Department of Public Works.

23. Representatives of The Children's Hospital National Medical Center, the Department of Veterans Affairs, Providence Hospital, Catholic University, the D.C. Chamber of Commerce, and the American Heart Association submitted letters to the record in support of the first-stage application.

24. Various citizens, including a Commissioner from Advisory Neighborhood Commission ("ANC") 5C, submitted statements to the record in support of the first-stage application.

25. By letter dated August 16, 2000, ANC 4D recommended that the first-stage application be approved. The letter did not address any particular issue or concern, but noted that the plan did not address the issue of offering some free parking for patients and visitors.

26. By letter dated December 1, 2000, ANC 5C expressed its support for the first-stage application. ANC 5C indicated that approval of the first-stage application "will have negligible adverse impact upon the surrounding residential community." ANC 5C based its conclusion upon traffic control measures already taken by the Applicant as well as the District government and the Applicant's commitment to work with ANC 5C to resolve any traffic or parking issues that might arise. Like ANC 4D, ANC 5C expressed the concern of some of its members, "about the affordability of public parking for visitors and patients of the hospital." ANC 5C therefore recommended that MedStar should either provide a certain amount of free parking or implement a system of discounted parking. These issues were discussed and decided by the Commission in its First-Stage Order No. 969.

27. Ms. Cleopatra Jones, President of the Bloomingdale Civic Association, appeared at the first-stage hearing to express that organization's support for the first-stage application.

28. Several area residents, including a Commissioner from ANC 4D, testified in support of the first-stage application.

29. There were no letters in opposition to the application submitted for the record, and no persons in opposition to the proposal testified at the first-stage public hearing.

30. Pursuant to Chapter 24 of the Zoning Regulations, the Zoning Commission has the authority to consider this application as the second-stage of a two-stage PUD proceeding.

31. On November 4, 2002, the Zoning Commission set this application down for public hearing having found that the conditions specified in the First-Stage Order for consideration of an application for second-stage approval of the PUD had been satisfied.

32. In a pre-hearing submission dated November 8, 2002 (the "Pre-hearing Submission"), MedStar submitted a Statement of Uses, a detailed site plan, landscape and grading plans, floor plans and elevations, vehicular and pedestrian circulation plans, and a statement of compliance with the Zoning Regulations and the First-Stage Order.

33. The Zoning Commission held a public hearing on the second-stage application on January 9, 2003.

34. The record in Zoning Commission Case No. 00-02, from which the First-Stage Order arose, was incorporated by reference into the Second-Stage Case.

35. There were no requests for party status made at the January 9, 2003, hearing or filed with the Zoning Commission.

36. At the hearing on January 9, 2003, MedStar submitted written testimony supplementing the application and the Pre-hearing Submission and provided evidence that it had satisfied each of the guidelines, conditions, and standards set forth in the First-Stage Order and the applicable Zoning Regulations, and required for second-stage approval of the application.

37. By report dated December 30, 2002, and by testimony at the public hearing on January 9, 2003, the Office of Planning determined that the Application was in compliance with the conditions set forth by the Commission in the First-Stage Order and recommended approval of the application provided that D-DOT did not object to the Applicant's plans to implement the transportation improvements and transportation management plan required by Condition 13 of the First-Stage Order.

38. D-DOT determined that it has no objection to the information provided by the Applicant concerning the implementation of the transportation improvements and the transportation management plan required by Condition 13 of the First-Stage Approval Order.

39. ANC 4D submitted a letter in support of the second-stage application.

40. ANC 5C did not appear at the January 9, 2003, public hearing and made no submission into the record of the second-stage application.

41. The Commission finds that the second-stage elements of the PUD project and the related map amendment are in conformance with the comprehensive plan, which designates the site for institutional uses.

42. The Commission finds that the approval of this second-stage application will result in the efficient, economic utilization of the land; will provide improved building design; will create the opportunity for an increase in health care facilities; and will adequately address the protection of the public health, safety, welfare, and convenience.

43. The Commission finds that the Applicant has met the requirements of 11 DCMR, Chapter 24, with respect to second-stage PUDs and has fulfilled the intent and purposes thereof.

44. At the conclusion of the public hearing held on January 9, 2003, the Zoning Commission took proposed action by a vote of 3-0-2 to approve with conditions the Applications and plans presented at the public hearing.

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45. The proposed action of the Zoning Commission to approve the application as a second-stage PUD with conditions was referred to NCPC pursuant to the terms of the District of Columbia Home Rule Act. NCPC did not file a report.

46. The Zoning Commission took final action to approve the Applications with conditions at its public meeting on February 24, 2003.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project, "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.

2. The development of this PUD carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of all well-planned institutional, commercial, and mixed-use developments that will offer a variety of building types with more attractive and efficient overall planning and design than might otherwise be achieved under matter-of-right development.

3. The development of this PUD is compatible with District-wide and neighborhood goals, plans, and programs and is sensitive to environmental protection and energy conservation.

4. The approval of this application is not inconsistent with the comprehensive plan for the National Capital Area, because it will stabilize the delivery of healthcare services, strengthen the distinguishing characteristics of the area, and increase employment opportunities.

5. The approval of this application is consistent with the purposes of the Zoning Act and the Zoning Regulations of the District of Columbia which include stabilizing land values and improving mixed-use areas.

6. The second-stage application can be approved with conditions, which ensures that the development will not have an adverse effect on the surrounding community or the District.

7. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

8. The approval of this second-stage application will promote orderly development in conformity with the entirety of the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map of the District of Columbia.

9. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, as amended.

10. The Zoning Commission has accorded the recommendations and opinions of ANC 4D the "great weight" to which they are entitled. The Commission is required under D.C. Code §1-309.10(d) (2001) to give great weight to the issues and concerns raised in the recommendations of the affected ANCs. ANC 4D did not indicate any issues or concerns, other than to indicate its position in favor of approval.

DECISION

In consideration of the findings of fact and conclusions of law contained in this order ("Order"), the Zoning Commission of the District of Columbia orders APPROVAL of this application as a second-stage PUD for a portion of Lot 2 in Square 3129 and an amendment to the zoning map from R-5-A to SP-1 and SP-2 as set forth in Zoning Strategy B of Master Plan 2000 (Figure 6.6c). The approval is subject to the guidelines, conditions, and standards that were identified and approved in the First Stage Order, which are as follows:

1. The PUD shall be consistent with the Washington Hospital Center, MedStar Health Master Plan 2000, as revised and dated August 2000, and submitted to the Zoning Commission record on April 6, 2001. The following conditions shall also apply to the PUD approval and shall supercede, or be in addition to, any elements of the Master Plan in contradiction to, or silent on these conditions:

    a. The zoning that shall accompany the PUD shall be that shown in Zoning Strategy B, Master Plan 2000.

    b. The total gross floor area shall be limited to approximately 4.5 million square feet (3.1 million square feet of additional gross floor area ("gfa") added to the current 1.4 million square feet).

    c. The density for the 623,866 square foot SP-1 portion of the PUD shall be limited to a cumulative 1.9 FAR, for a total of 1,185,345 FAR-countable square feet.

    d. The density for the 836,985 square foot SP-2 portion of the PUD shall be limited to a cumulative 3.4 FAR, for a total of 2,845,749 FAR-countable square feet.

    e. Although included in the above totals, approval of the square footage for the Southeast Complex-Phase VI building, as indicated in Figure 7.7e of the Master Plan 2000, is withheld pending consideration of FAR for this phase in a later Stage II application for the Phase VI area.

    f. Buildings within the SP-1/PUD shall not exceed sixty-five (65) feet in height.

g. Buildings within the SP-2/PUD shall not exceed ninety (90) feet in height.

h. Sight lines from the United States Armed Forces' Home, as illustrated in the Applicant's submission of March 5, 2001, Tab C, shall be maintained.

i. No more than 2,500,000 square feet of new below-grade, non-FAR-countable space shall be constructed without an approved PUD modification. Permitted uses shall include all uses described in Chapter 4, pages 5-8 and Chapter 7, pages 11-14 of the Master Plan as submitted for the record on April 6, 2001.

j. All uses set forth in Master Plan 2000, including physicians' office space, guest accommodations, and parking garages, shall be permitted as a matter-of-right under the zoning associated with the PUD.

k. The Applicant shall adhere to the following transportation-related conditions. These conditions reflect an agreement reached between the applicant and D-DOT. Although the conditions also include commitments by D-DOT to take certain actions, the Commission has no authority to require D-DOT's compliance. These commitments have been included to assist the public in understanding the process by which these roadway improvements will occur:

(i) MedStar shall implement the transportation management plan outlined in the Master Plan dated August 2000;

(ii) MedStar shall reimburse the District of Columbia Government for 100% of the traffic engineering and construction costs of Roadway Improvements 1 through 4, up to MedStar's Reimbursement Amount, as outlined in the table below:

Roadway Improvements	Reimbursement Amount
1. Irving Street and Hobart Place at-grade access.	$1.2 million
2. Irving Street at-grade right turn in and right turn out access to Parking Pavilion I	$75,000
3. Michigan Avenue at Hospital Center Drive (south) signalization and signage (including interconnection with adjacent signal).	$100,000
4. Michigan Avenue and First Street signalization and geometric improvements.	$100,000

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(iii) MedStar shall pay D-DOT the total Reimbursement Amount of $1,475,000 prior to the issuance of a building permit to construct any structure, that individually, or in combination with existing structures or with other structures not yet built but for which building permits have been applied, would cause the development on the PUD Site to be increased by 300,000 square feet of net building space (including underground or parking facilities) beyond what existed on the date of the final approval of this Order. MedStar shall notify D-DOT prior to filing each application for a building permit for a structure authorized by this final PUD approval, until such time as MedStar makes the full payment set forth above.

(iv) All design plans for Roadway Improvements 1 through 4 are to be reviewed and approved by D-DOT prior to construction;

(v) Roadway Improvements 1 through 4 shall be constructed before any new Certificate of Occupancy is issued to any structure that causes the total development on the PUD Site to be increased by 300,000 square feet of net building space (including underground parking or parking facilities), provided that Roadway Improvements 1 and 4 are constructed by D-DOT in a reasonable time after D-DOT has been notified of MedStar's intention to apply for a building permit;

(vi) MedStar shall, at its own expense, prepare and submit to D-DOT the design plans for Roadway Improvements 5 and 6 consistent with the following table:

Roadway Improvements	Estimated Construction Cost	Due Date for Design Plans
5. Irving Street and First Street intersection signalization and geometric improvements	$700,000	To be determined by D-DOT
6. North Capitol Street and Irving Street interchange improvements	$800,000	To be determined by D-DOT

(vii) D-DOT shall be responsible for all construction engineering and construction costs related to Roadway Improvements 5 and 6. D-DOT shall seek eighty percent (80%) federal aid funding for the construction engineering and construction costs of these two

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projects which will be provided by the District local transportation trust fund, subject to appropriations;

(viii) All design plans related to Roadway Improvements 5 and 6 shall be submitted to D-DOT for review and approval prior to construction.

(ix) D-DOT shall incorporate the design plans for Roadway Improvements 5 and 6 into a contract for the reconstruction of North Capitol Street near Irving Street, N.W.;

(x) Roadway Improvements 5 and 6 shall be constructed before any new Certificate of Occupancy is issued to any structure that individually, or in combination with existing structures or with other structures not yet built but for which building permits have been applied, would cause the development on the PUD Site to be increased by 300,000 square feet of net building space (including underground or parking facilities) beyond what existed on the date of this Order, provided that Roadway Improvements 5 and 6 are constructed by D-DOT in a reasonable time after D-DOT has been notified of MedStar's intention to apply for a building permit;

(xi) There shall be at least five (5) entrances to the Site: three (3) of those entrances shall be via First Street, N.W.; one (1) shall be via Michigan Avenue, west of the Children's Hospital National Medical Center; and one (1) shall be via Kenyon Street/Hobart Street from the west;

(xii) The entrances from the north shall be designed to accommodate approximately sixty-five percent (65%) of the anticipated vehicular traffic to the PUD Site. Of the two (2) entrances from the north, one (1) entrance shall be for direct access to the existing Parking Pavilion I from the vicinity of Kenyon Street; the other primary entrance shall be from Irving Street at First Street; and

(xiii) The entrance from the west side shall incorporate an entry into the Emergency Services Department.

2. This second-stage PUD approval by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, the Applicant must file an application for a building permit as specified in 11 DCMR § 2408.8 to preserve the effectiveness of this Order unless the Zoning Commission otherwise acts to extend the validity of this Order. Construction shall start within three (3) years of the effective date of this Order to preserve the

effectiveness of this Order unless the Zoning Commission otherwise acts to extend the validity of this Order. In the event that the Applicant files an application for a building permit within the two- (2) year period stated in this paragraph, the PUD approved herein shall be valid for a period of ten (10) years from the effective date of this Order.

3. The Applicant shall execute a Memorandum of Understanding ("MOU") with the D.C. Office of Local Business Development prior to the issuance of the first building permit for the phased construction projects that are contemplated by the PUD. The MOU shall be updated prior to the issuance of each subsequent building permit. The Applicant shall abide by the terms of the executed MOU in order to achieve, at a minimum, the goal of thirty-five percent (35%) participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security for the project to be created as a result of the PUD project. After the completion of construction of the PUD, the Applicant shall provide a written status report to the Zoning Commission and to the D.C. Local Business Opportunity Commission regarding compliance with the MOU.

4. The Applicant shall be required to execute a First Source Employment Agreement (the "Employment Agreement") with the Department of Employment Services ("DOES") prior to the issuance of the first building permit for the phased construction projects that are contemplated by the PUD. The Employment Agreement shall be updated prior to the issuance of each subsequent building permit. The Applicant shall abide by the terms of the executed Employment Agreement in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD project. After the completion of construction of the PUD, the Applicant shall provide a written status report to the Zoning Commission and to the DOES regarding compliance with the Employment Agreement.

5. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, 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., (the "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, familiar 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. Nothing in this Order shall be understood to require the Zoning Division of DCRA to approve permits if the Applicant fails to comply with any provision of the Act.

6. The zoning designation approved herein shall not become effective until the covenant required at 11 DCMR § 2409.3 has been recorded.

Vote of the Zoning Commission taken at the conclusion of the public hearing on the second-stage application January 9, 2003: **3-0-2** to **GRANT** second-stage approval (Carol J. Mitten, Anthony J. Hood, and Peter J. May to approve; John G. Parsons and James H. Hannaham, not present, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting held on February 24, 2003, by a vote of **5-0-0** (Carol J. Mitten, Anthony J. Hood, James H. Hannaham, John G. Parsons, and Peter G. May to adopt). In accordance with the provisions of 11 DCMR 3028, this Order shall become final and effective upon publication in the D.C. Register; that is on _____.

JUL 1 8 2003

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