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	Sq.	Use
4/24/03	2613 P Street, NW	97	1265	Sign/Retail
4/25/03	3422 Brown Street, NW	366	2621	Concept
	328 8th Street, NE	815	894	Concept
	1521 14th Street, NW	114	241	Raze
	3104 33rd Street, NW	8	2091	Concept
4/28/03	1412 29th Street, NW	214	1258	Replace Fence
	1524 8th Street, NW	Per Sub	397	Reno/Add
4/29/03	3519 Porter Street, NW	45 – 48	1957	Concept
	935 26th Street, NW	94	16	A.R. / Add SFD
	3619 37th Street, NW	5	1909	Concept
5/1/03	1852 Park Road, NW	41	2606	Add bathroom Deck

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 two (2) Advisory Neighborhood Commission offices. certified pursuant to D.C. Code §1-309.06(d)(2) [(2001 Ed.].

VACANT: **4A05**
8E01

Petition Circulation Period: **Tuesday, April 22, 2003 thru Monday, May 12, 2003**
Petition Challenge Period: **Thursday, May 15, 2003 thru Wednesday, May 21, 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 REGISTER MAY 9 - 2003

District of Columbia
BOARD OF ELECTIONS AND ETHICS

Monthly Report

of

VOTER REGISTRATION STATISTICS

as of

MARCH 31, 2003

Covering Citywide Totals by:

WARD, PRECINCT, and PARTY

One Judiciary Square
441 - 4th Street, NW, Suite 250N
Washington, DC 20001
(202) 727-2525
http://www.dcboee.org

DISTRICT OF COLUMBIA REGISTER
D.C. BOARD OF ELECTIONS AND ETHICS MAY 9 - 2003

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE SUMMARY

Party Totals and Percentages by Ward for the period ending March 31, 2003

WARD	DEM	REP	STG	N-P	OTH	TOTALS
1	30,443	2,334	1,046	7,904	264	**41,991**
2	24,971	5,332	505	8,450	155	**39,413**
3	30,071	8,395	399	9,014	103	**47,982**
4	42,067	2,506	623	6,249	204	**51,649**
5	40,557	1,797	627	5,594	181	**48,756**
6	35,336	4,268	627	6,766	187	**47,184**
7	38,435	1,376	498	4,916	159	**45,384**
8	30,551	1,376	584	4,512	144	**37,167**
TOTALS	*272,431*	*27,384*	*4,909*	*53,405*	*1,397*	*359,526*
TOTAL Percentage (by party)	*75.8%*	*7.6%*	*1.4%*	*14.9%*	*0.4%*	*100.0%*

D.C. BOARD OF ELECTIONS AND ETHICS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 1

For the Period Ending: March 31, 2003

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
20	1,462	36	20	288	40	1,846
22	1,719	151	52	380	15	2,317
23	1,244	65	59	364	14	1,746
24	1,766	196	52	491	14	2,519
25	3,194	462	93	922	15	4,686
35	2,645	226	117	776	14	3,778
36	2,760	176	97	655	26	3,714
37	2,689	124	55	669	43	3,580
38	1,995	93	44	399	8	2,539
39	2,566	207	144	756	18	3,691
40	2,633	216	141	823	24	3,837
41	2,026	115	81	568	13	2,803
42	1,245	45	26	274	9	1,599
43	1,189	54	30	207	6	1,486
136	699	137	11	214	1	1,062
137	611	31	24	118	4	788
TOTALS	30,443	2,334	1,046	7,904	264	41,991

D.C. BOARD OF ELECTIONS AND ETHICS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 2

For the Period Ending: March 31, 2003

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
2	436	140	9	270	3	858
3	1,111	451	8	481	6	2,057
4	939	326	12	414	6	1,697
5	1,920	743	23	691	5	3,382
6	2,602	1,370	47	1,723	18	5,760
13	1,033	297	9	377	5	1,721
14	2,384	463	49	758	13	3,667
15	2,571	362	50	697	21	3,701
16	2,034	261	46	509	13	2,863
17	2,850	410	77	887	22	4,246
18	2,788	156	70	602	14	3,630
21	1,128	63	32	217	7	1,447
129	1,291	89	24	279	9	1,692
141	1,884	201	49	545	13	2,692
TOTALS	24,971	5,332	505	8,450	155	39,413

D.C. BOARD OF ELECTIONS AND ETHICS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 3

For the Period Ending: March 31, 2003

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
7	1034	437	9	418	4	1,902
8	2094	774	25	600	6	3,499
9	857	619	8	382	5	1,871
10	1546	636	10	568	9	2,769
11	2701	836	63	1101	22	4,723
12	442	194	4	165	2	807
26	2213	499	32	706	3	3,453
27	2090	344	29	460	9	2,932
28	2004	762	19	707	4	3,496
29	1039	259	23	286	4	1,611
30	1044	300	11	229	3	1,587
31	1933	439	22	495	10	2,899
32	2253	434	31	528	4	3,250
33	2433	451	42	619	6	3,551
34	2909	646	41	914	7	4,517
50	1743	327	17	376	3	2,466
138	1736	438	13	460	2	2,649
TOTALS	30,071	8,395	399	9,014	103	47,982

DISTRICT OF COLUMBIA REGISTER

MAY 9 - 2003

D.C. BOARD OF ELECTIONS AND ETHICS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 4 For the Period Ending: March 31, 2003

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
45	1,848	73	37	284	12	*2,254*
46	2,546	78	39	378	18	*3,059*
47	2,162	139	41	430	15	*2,787*
48	2,526	135	40	352	16	*3,069*
49	614	32	15	118	3	*782*
51	2,850	633	28	588	7	*4,106*
52	1,101	272	8	217	2	*1,600*
53	1,045	78	15	195	10	*1,343*
54	1,928	120	43	338	14	*2,443*
55	2,291	79	30	311	10	*2,721*
56	2,803	70	38	441	10	*3,362*
57	2,286	86	32	330	17	*2,751*
58	2,060	51	29	275	8	*2,423*
59	2,408	78	35	296	11	*2,828*
60	1,657	84	32	336	7	*2,116*
61	1,473	62	21	174	4	*1,734*
62	3,012	173	39	319	6	*3,549*
63	2,800	*133*	*60*	398	12	*3,403*
64	2,194	70	19	224	8	*2,515*
65	2,463	60	22	245	14	*2,804*
TOTALS	*42,067*	*2,506*	*623*	*6,249*	*204*	*51,649*

DISTRICT OF COLUMBIA REGISTER

MAY 9 - 2003

D.C. BOARD OF ELECTIONS AND ETHICS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 5 **For the Period Ending: March 31, 2003**

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
19	2,977	149	89	538	9	*3,762*
44	2,295	224	37	431	19	*3,006*
66	4,059	105	31	362	18	*4,575*
67	2,782	106	22	304	12	*3,226*
68	1,702	165	30	273	8	*2,178*
69	2,070	88	13	196	10	*2,377*
70	1,317	67	27	189	1	*1,601*
71	2,315	78	32	286	10	*2,721*
72	3,293	92	34	442	10	*3,871*
73	1,630	70	29	254	6	*1,989*
74	3,019	160	41	468	15	*3,703*
75	2,354	109	52	399	13	*2,927*
76	648	22	15	104	6	*795*
77	2,386	91	43	339	13	*2,872*
78	2,168	73	39	294	8	*2,582*
79	1,592	62	30	224	6	*1,914*
135	2,300	105	54	375	13	*2,847*
139	1,650	31	9	116	4	*1,810*
TOTALS	*40,557*	*1,797*	*627*	*5,594*	*181*	*48,756*

D.C. BOARD OF ELECTIONS AND ETHICS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 6 For the Period Ending: March 31, 2003

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
1	*2,239*	141	*43*	391	9	*2,823*
81	3,914	211	56	550	22	4,753
82	2,143	131	36	352	12	*2,674*
83	2,580	171	55	452	14	*3,272*
84	1,775	349	30	415	11	*2,580*
85	2,202	464	35	503	9	*3,213*
86	1,989	189	25	332	7	*2,542*
87	2,257	120	47	348	14	*2,786*
88	1,802	276	33	351	5	*2,467*
89	2,235	639	37	569	12	*3,492*
90	1,233	201	18	304	7	*1,763*
91	3,061	256	58	581	19	*3,975*
127	3,085	273	61	531	13	*3,963*
128	1,387	135	39	308	8	*1,877*
130	1,308	487	29	365	10	*2,199*
131	834	38	15	114	5	*1,006*
142	1,292	187	10	300	10	*1,799*
TOTALS	*35,336*	*4,268*	*627*	*6,766*	*187*	*47,184*

DISTRICT OF COLUMBIA REGISTER

MAY 9 - 2003

D.C. BOARD OF ELECTIONS AND ETHICS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 7 For the Period Ending: March 31, 2003

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
80	1,170	46	18	149	8	1,391
92	1,167	51	20	159	9	*1,406*
93	1,211	60	15	152	5	*1,443*
94	1,563	65	18	196	8	*1,850*
95	1,210	23	20	182	2	*1,437*
96	1,818	76	26	264	4	*2,188*
97	929	35	20	135	1	*1,120*
98	1,455	41	17	159	9	*1,681*
99	935	39	15	137	6	*1,132*
100	1,309	48	27	185	5	*1,574*
101	1,440	38	10	151	9	*1,648*
102	1,849	57	16	202	10	*2,134*
103	2,658	95	30	364	8	*3,155*
104	1,955	61	27	266	9	*2,318*
105	1,881	69	36	223	4	*2,213*
106	2,544	73	33	286	8	*2,944*
107	1,163	47	20	193	3	*1,426*
108	1,053	49	7	86	5	*1,200*
109	952	42	9	94	1	*1,098*
110	3,427	112	37	400	12	*3,988*
111	1,672	46	31	272	3	*2,024*
112	1,714	*50*	*19*	*228*	*13*	*2,024*
113	1,798	95	12	236	11	*2,152*
132	1,562	58	15	197	6	*1,838*
TOTALS	*38,435*	*1,376*	*498*	*4,916*	*159*	*45,384*

D.C. BOARD OF ELECTIONS AND ETHICS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 8 For Period Ending: March 31, 2003

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
114	2,308	120	53	342	34	2,857
115	1,730	54	41	296	4	2,125
116	2,541	100	43	364	12	3,060
117	1,068	50	29	178	1	1,326
118	1,809	86	46	278	5	2,224
119	2,119	106	49	297	9	2,580
120	1,617	81	33	236	7	1,974
121	2,681	106	50	357	10	3,204
122	1,276	39	24	175	2	1,516
123	1,917	210	41	341	6	2,515
124	1,932	62	28	252	5	2,279
125	2,852	109	51	408	8	3,428
126	2,544	91	34	406	15	3,090
133	1,185	46	10	137	9	1,387
134	1,412	58	25	204	4	1,703
140	1,560	58	27	241	13	1,899
TOTALS	30,551	1,376	584	4,512	144	37,167

DISTRICT OF COLUMBIA FLAG DESIGN ADVISORY COMMITTEE

NOTICE OF PUBLIC MEETING

The District of Columbia Flag Design Advisory Committee will hold public meetings on the dates listed below. The meetings shall begin at 6:30 p.m. and shall end no later than 8:30 p.m. All are held at the Historic Sumner School, 1201 17th Street, N.W. The dates for the meetings are as follows:

Monday, May 12, 2003
Monday, May 19, 2003
Monday, June 2, 2003

Community members interested in the work of the District of Columbia Flag Design Advisory Committee are encouraged to attend.

For additional information, please feel free to contact the Office of Boards and Commissions, Executive Office of the Mayor, at (202) 727-1372.

DEPARTMENT OF HEALTH

NOTICE OF DECERTIFICATION

The Director of the Department of Health, pursuant to the authority set forth in Reorganization Plan No 4 of 1996, hereby gives notice of decertification of four drugs and removal from the formulary of the District of Columbia Acquired Immunodeficiency Syndrome Drug Assistance Program (ADAP). The drugs that have been decertified and removed from the ADAP formulary are Ganciclovir (Cytovene), Ofloxacin (Floxin), Hydroxyurea (Hydrea), and Amphotericin B (Fungizone). The listed drugs have been decertified on the recommendation of the HIV/AIDS Drugs Advisory Committee (HADAC) at a meeting held on January 15, 2003. The HADAC recommended removal of the drugs from the formulary because there are other drugs that are as effective as those being removed or because of the low volume of use of these drugs.

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

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

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 install three 9.0 million Btu per hour natural gas firing Cleaver Brooks boilers and two-caterpillar 1250 KW generators to The George Washington University Hospital located at 900 23rd Street, N.W., in the District of Columbia.

The application for construction of boilers and generators is available for public inspection at 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 Ola Tajudeen, at (202) 535-2998.

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 June, 9 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 Ola Tajudeen at (202) 535-2998.

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 install two water heaters; one (1) 5.7 million BTU per hour natural gas firing PV1 Industries and one (1) 0.6 million BTU per hour natural gas firing PV1 Industries to The University of the District of Columbia, Building #47 located at 4200 Connecticut Ave., N.W., in the District of Columbia.

The application for construction of boilers is available for public inspection at 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 John Nwoke, at (202) 724-7778.

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 June, 9 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 John Nwoke, at (202) 724-7778.

D.C. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF DETERMINATION OF INCOME LIMITS

The Department of Housing and Community Development, pursuant to the authority in Chapter 25, Title 14, DCMR, Section 2510 of the rules for the Home Purchase Assistance Program (HPAP), hereby gives notice that it has established the following income limits for participation of very low income, lower income and moderate income households in the HPAP Program:

INCOME LIMITS BY PERSONS IN HOUSEHOLDS

Eligibility Category	1	2	3	4	5	6	7	8 or more
Very Low Income	29,700	33,900	38,200	42,400	45,800	49,200	52,600	56,000
Lower Income	47,500	54,300	61,100	67,850	72,100	76,350	80,600	84,800
Moderate Income	65,300	74,650	84,000	93,300	99,150	99,150	99,150	99,150

These income limits have been determined based on the median family income of $84,800 established by the Secretary of the U.S. Department of Housing and Urban Development for 2003, for the Washington Metropolitan Statistical Area. The amounts determined above have been calculated based on Section 2510 of the HPAP Program rules. These income limits shall be effective upon publication of this Notice in the D.C. Register.

Office of the Director of the Department of Mental Health

Public Notice of Funding Availability

The District of Columbia, Office of the Director of the Department of Mental Health, announces the availability of grant funding to develop the framework for housing-first assertive community treatment services for chronically homeless individuals with co-occurring substance abuse disorders in the District of Columbia.

Qualified community-based organizations are invited to submit applications for the following grant award:

Development of Housing-First
Assertive Community Treatment Services

The target population for the purposes of this Request for Applications (RFA) will be adults with serious and persistent mental illness, a co-occurring substance disorder and a history of chronic homelessness (an unaccompanied homeless individual with a disabling condition who has either been continuously homeless for a year or more or has had at least four episodes of homelessness in the past three years).

One award will be made for a period of three months with the understanding that these funds will be used for organization start-up.

The RFA will be available on May 5, 2003 and may be picked up at the reception desk of the following office between 9:00 am and 4:30 pm:

Office of the Department of Mental Health
64 New York Avenue, N.E.
Fourth Floor
Washington, D.C. 20002

(Union Station Metro Stop)

The deadline for submission of applications is 4:30 p.m. on May 30, 2003.

For additional questions regarding this RFA contact:

Linda Kaufman
Director, Organizational Development
Department of Mental Health
(202) 673-7505
(202) 673-1930(fax)
linda.kaufman@dc.gov

Office of the Director of the Department of Mental Health

Public Notice of Funding Availability

The District of Columbia, Office of the Director of the Department of Mental Health, announces the availability of grant funding for the provision of an International Center for Clubhouse Development (ICCD) certified rehabilitative clubhouse.

Qualified nonprofit, community-based organizations are invited to submit applications for the following award:

International Center for Clubhouse Development (ICCD) Certified Rehabilitative Clubhouse

The target population for the purposes of this RFA will be adults with serious and persistent mental illness.

One award will be made for a period of one year with the option to renew for four additional years, subject to funding availability.

The Request for Applications (RFA) will be available on May 5, 2003 and may be picked up at the reception desk of the following office between 9:00 am and 4:30 pm:

Office of the Department of Mental Health
64 New York Avenue, N.E.
Fourth Floor
Washington, D.C. 20002

(Union Station Metro Stop)

The deadline for submission of applications is 4:30 p.m. on May 26, 2003.

For additional questions regarding this RFA contact:

Elizabeth Jones
Senior Planner
Department of Mental Health
(202) 671-3152
(202) 673-7502 (fax)
Elizabeth.jones@dc.gov

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Executive Office of the Mayor

OFFICE OF PARTNERSHIPS AND GRANTS DEVELOPMENT

SECOND QUARTER REPORT ON DONATIONS APPROVED BY OPGD FOR FY 2003

Pursuant to Mayor's Order 2002-2 dated January 11, 2002, the Director of the Office of Partnerships and Grants Development (OPGD), in consultation with the Office of the Corporation Counsel's Ethics Counselor, is publishing the District's Second Quarter Report on Donations for Fiscal Year 2003. The Order requires the OPGD Director to review all requests by District officials to solicit or accept donations and approve or disapprove such requests as appropriate in accordance with the Rules of Conduct Governing Donations (Mayor's Memorandum 2002-1) and Section 115 of the 2003 D.C. Appropriations Act. This report includes data on all donation requests submitted to the Director for the period beginning January 1, 2003 and ending March 31, 2003. During this period, the OPGD Director approved the solicitation and/or acceptance of **$232,529** in donations of which **$66,725** represented financial contributions, and **$165,804** represented in-kind contributions. Please contact the OPGD Director at (202) 727-8900 for more details on the report.

District Recipient	Donor	Donation Information	Approval Date
Child and Family Services Agency	Airline Ambassadors	Donation of $190 in goods and services. 19 pieces of luggage are being donated for use by CFSA foster children.	Authority to accept the donation approved on 2-21-03
Child and Family Services Agency	Damascus United Methodist Church	Donation of $700 in goods and services. 70 pieces of luggage are being donated for use by CFSA foster children.	Authority to accept the donation approved on 3-19-03
Child and Family Services Agency	Covington and Burling	Donation of pro-bono services valued at $15,000 relating to LaShawn A. vs. Williams case to research the details of settlements and court orders in child welfare class actions throughout the country.	Authority to accept the donation approved on 4-15-03
D.C. Parks and Recreation	Books of America	Donation of 10,000 paperback books valued at $20,000.	Authority to accept the donation approved on 3-28-03
Emergency Management Agency	The Washington Plaza Hotel	Donation of $301 in goods and services for the Jefferson Room used to conduct a community emergency preparedness meeting for Ward 2 cluster 7 and 8.	Authority to accept the donation approved on 2-24-03

District Recipient	Donor	Donation Information	Approval Date
Department of Employment Services	Dale Brown	Donation of approximately 58 job search reference books valued at $1,000.	Authority to accept the donation approved on 3-13-03
Executive Office of the Mayor/ Office of Community Affairs	State Farm Insurance $2,500 Fannie Mae Foundation $1,000 Bank of America $1,338 Linen of the Week $186	Donation of $5,024 of which $4,500 is financial and $524 are goods for the Mayor's Crime Prevention Forum I.	Authority to accept the donation approved on 1-31-03
Executive Office of the Mayor/D.C. Commission on National and Community Service	Einstein Bagels $69 Whole Foods $450	Donation of $519 in goods for refreshments for 300 participants at the All Corps Service Day kick-off event on May 3, 2003.	Authority to accept the donation approved on 4-17-03
Executive Office of the Mayor/D.C. Commission on National and Community Service	Freddie Mac Foundation	Donation of $50,000 to fund the National Youth Service Day from April 11-13, 2003.	Authority to accept the donation approved on 3-19-03
Executive Office of the Mayor/D.C. Commission on National and Community Service	Nike Foundation	Donation of 3,500 Nike T-shirts valued at $63,000 for the youth volunteers participating in the National Youth Service Day from April 11-13, 2003.	Authority to accept the donation approved on 4-11-03
Executive Office of the Mayor	Washington Convention and Tourism Corporation	Donation of $2,375 in goods and services for T-shirts and bags for the National League of Cities legislative conference.	Authority to accept the donation approved on 3-7-03
Executive Office of the Mayor	Fannie Mae	Donation of $6,225 to support the National League of Cities legislative conference.	Authority to accept the donation approved on 3-7-03
Executive Office of the Mayor	The George Washington University – Center for Excellence in Municipal Management	Donation of $26,500 in goods and services to be used to provide facilities, meals and personnel for facilitation of the Mayor's Cabinet Retreat on February 10-11, 2003.	Authority to accept the donation approved on 2-7-03
Executive Office of the Mayor	George Washington School of Public Health ($1,200) DC Chartered Health Plan, Inc. ($3,000)	Donation of $4,200 in goods and services for boxed lunches for participants at the Health Summit II.	Authority to accept the donation approved on 1-2-03
Executive Office of the Mayor	Starbucks	Donation of $300 in goods for coffee served at the Great American Clean Up on March 29, 2003	No prior approval to accept donation
Executive Office of the Mayor	Covington and Burling	Donation of pro-bono legal services related to the Washington Teachers Union officials' conduct toward government	Authority to accept the donation approved on 4-7-03
Fire-Emergency Medical Services	National Academy of Science	Donation of garbage dumpster located at the National Academy Science facility valued at $100.	Authority to accept the donation authorized on 2-10-03
Martin Luther King Jr. Holiday Commission	Washington Gas $5,000 D.C. Chartered Health Plan $1,000 Tiffany and Company $1,095	Donation of $7,095 to support the 18th Annual MLK Jr. Holiday Celebration and of which $6,000 is financial and $1,095 is in-kind goods (crystal prisms) for recipients of the Living the Dream Award.	Authority to accept the donation approved on 1-17-03
Office of the Chief Technology Officer	Networking for the Future, LLC	Donation of information technology services valued at $30,000 to assist with the District agency's IT related work.	Authority to accept the donation approved on 3-11-03

Washington Convention Center Authority

Board of Directors

Changes in Meeting Dates

The Board of Directors of the Washington Convention Center Authority hereby gives notice of the following changes in its schedule of public meetings, published at 50 DCR 403 on January 10, 2003.

The Board's public meeting scheduled for May 22, 2003 has been rescheduled to Thursday, May 15, 2003. The meeting will begin at 10:00 a.m. in the Board Room of the new Washington Convention Center, 801 Mount Vernon Place, NW, Washington, DC.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16920 of William Bass, pursuant to 11 DCMR § 3104.1, for a special exception to establish an art gallery (1st floor and a portion of the 2nd floor) within an existing apartment house under section 361 at premises 1629 21st Street, N.W., zoned DC/D/R-5-B. (Square 93, Lot 122)

HEARING DATES: October 1, 2002, October 29, 2002, November 12, 2002, November 26, 2002

DECISION DATE: January 14, 2003

DECISION AND ORDER

The applicant in this case is William Bass, ("Applicant") the owner of the property that is the subject of this application. The Applicant proposes to lease the subject property to Andrea Marinkovich, who will use a portion of the property as an art gallery. Ms. Marinkovich currently operates an art gallery nearby at 1506 21st Street, N.W., but would like to re-locate her gallery to the subject property in order to increase its size. Ms. Marinkovich proposes to use the third and part of the second floor of the subject property as a residence, and the rest of the second floor and all of the first floor for her gallery. The basement of the subject property already houses an art gallery, named Brown's Art Gallery.

On June 20, 2002, the Applicant filed an application with the District of Columbia Board of Zoning Adjustment ("Board") requesting a special exception to operate an art gallery at the subject property, pursuant to § 361 of Title 11 of the District of Columbia Municipal Regulations ("DCMR").

The Board scheduled a public hearing on the application for October 1, 2002. The hearing was postponed until October 29, 2002, at the request of the Applicant, who desired more time to discuss issues of concern with the community. The Applicant's request for postponement was concurred in by several persons who indicated they were seeking opposition party status and by Advisory Neighborhood Commission ("ANC"), 2B, within whose jurisdiction the subject property is located. The hearing went forward on October 29, 2002, but was continued until November 12, 2002. Due to the lateness of the hour on November 12, 2002, no part of the hearing transpired, but it was continued until November 26, on which date it was concluded. After the conclusion of the hearing, the Board decided that additional information was needed from the parties and the District of Columbia Office of Planning ("OP") prior to making its decision. After receipt of such information, the Board held a public decision meeting on January 14,

2003, and for the reasons stated below, voted 4-1-0 to grant the application, subject to certain conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated June 20, 2002, the District of Columbia Office of Zoning ("OZ") notified the following individuals/organizations of the filing of the application: OP, the City Councilmember for Ward 2, ANC 2B, and the ANC 2B member for Single Member District 2B02. Subsequently, on June 28, 2002, OZ referred the application to the District of Columbia Department of Transportation. Pursuant to 11 DCMR § 3113.13, the OZ published notice of the hearing on the application in the District of Columbia Register and on July 31, 2002, mailed notices to the ANC, the Applicant, and to all owners of property within 200 feet of the subject property, advising them of the date of the hearing. Further, the Applicant's affidavit of posting indicates that on September 12, 2002, Ms. Marinkovich placed 4 zoning posters on both the 21st Street, N.W. and the R St., N.W. Street frontages of the subject property, in plain view of the public.

Requests for Party Status. There were 5 party status requests, one of which was timely, and 4 of which were filed late, but accepted by the Board. At the October 29, 2002 hearing, the Board granted party status to Vincent Hurteau, Morton Schussheim and Solange Muller MacArthur, who were initially represented by Mr. Hurteau, but on and after November 26, 2002, were represented by Stephen Saltzburg. The Board denied party status to Carol M. Ridker and Stephen Saltzburg.

Applicant's Case. The Applicant presented Ms. Marinkovich's testimony, as well as that of her partner, Mr. Royce Burton. Both Ms. Marinkovich and Mr. Burton testified that the operation of their gallery in the Applicant's building would have no adverse impact on the neighborhood. Ms. Marinkovich testified that she will be living on the premise and that the gallery will not cause any objectionable noise, pedestrian or vehicular traffic. She testified that once a week, the gallery receives a delivery from a framing shop, and that the driver parks his vehicle and carries the framed art to the gallery. She also testified that, although the gallery will have approximately 8 to 10 special events per year, these events will not be catered, engendering no negative impacts from deliveries, and will be small, with a maximum of 40 attendees, most of whom will not be attending simultaneously. Mr. Lindsley Williams, an expert in land use planning, submitted a detailed report and testified on behalf of the applicant. He opined that the opening of Ms. Marinkovich's gallery would have no objectionable impacts on the neighborhood whatsoever. The Applicant and a close neighbor, Mr. Michael Frame, also testified as witnesses in support of the application.

Government Reports. On September 25, 2002, OP submitted a late report on the application, which was accepted by the Board. OP recommended denial of the

application because of the imbalance between residential and commercial uses in the neighborhood. OP was concerned with the potential adverse impacts of the gallery, including, a loss of residential space, the loading/unloading of catering and art delivery trucks, and up to 15 on-site special events per year, with a maximum of 100 guests per event. In an October 21, 2002, Supplemental Report, OP continued its opposition to the application, even after taking into account reduced guest count at special events. In a December 27, 2002 Amendment to its October 21, 2002 Supplemental Report, OP listed, but was not swayed by, the Applicant's proffered conditions, and reiterated its recommendation that the application be denied.

ANC Report. By letter dated September 24, 2002, ANC 2B indicated that it voted at a regularly scheduled meeting, with a quorum present, to "protest" the application. In its letter, the ANC did not go so far as to oppose the application because it was still negotiating with the Applicant. The ANC, however, made clear its opposition through the hearing testimony of its representative, Mr. Micone. Mr. Micone stated that ANC 2B concurred with OP's conclusion that the opening of the gallery in the Applicant's building would adversely affect the present character and future development of the surrounding area.

Parties and Persons in Support. There were no parties in support of the application, however, Ms. Anne Corbett, of the Cultural Development Corporation, testified as a person in support. Three local residents, Ms. Ellyn Ambrose, Mr. David Hatfield, and Ms. Ira Pinto, who also runs an art gallery, also testified as persons in support of the application. Several letters and a petition in support were entered into the record.

Parties and Persons in Opposition. There were three parties in opposition, Messrs. Vincent Hurteau and Morton Schussheim and Ms.Solange Muller-MacArthur, but they joined as one party for purposes of efficiency. The opposition party was initially represented by Mr. Hurteau, but was represented by Mr. Stephen Saltzburg on and after November 26, 2002. By letter dated October 1, 2002, the Dupont Circle Citizens Association stated its opposition to the application. A petition and several letters in opposition were received into the record, including letters from
Phil Mendelson and Jack Evans, District of Columbia Councilmembers. Without withdrawing his opposition, however, Councilmember Evans also sent a second letter indicating that the Board should consider the position of those in support of the application.

Hearing. The public hearing on the application began on October 1, 2002, but was postponed until October 29, 2002, at which time the Applicant presented his case, calling 4 fact witnesses and 1 expert witness. The hearing was then continued until November 12, 2002, but due to the lateness of the hour at which it could have been taken up, it was again continued to November 26, 2002, when the opponents put on their case, calling 4 fact witnesses. The hearing concluded on November 26, 2002.

Decision Meeting. At the public decision meeting on January 14, 2003, the Board voted 4-1-0 to grant the application, subject to certain conditions, for the reasons stated below.

FINDINGS OF FACT

Applicant's Property

1. The subject property is located in Square 93, bounded by R Street, N.W. to the north, 21st Street, N.W. to the west, Connecticut Ave., N.W. to the east, and Hillyer Place, N.W., to the south.

2. The subject property is located in a DC/D/R-5-B combined zone district. It is therefore within an R-5-B residential zone, within the Diplomatic Overlay zone district, which is located within the Dupont Circle Overlay District.

3. The property is a three story plus basement row house, built prior to 1958, and attached on both sides to similar row houses. It currently houses a three-unit apartment building and has an existing art gallery in the basement level.

4. The property has a one-car garage, with two off-street parking spots adjacent to it. The two spots will be available for gallery clients. The gallery will occupy approximately 1,200 square feet in the subject building.

5. 11 DCMR § 361 permits an art gallery as a special exception in an R-5-B district if approved by the Board, subject to its provisions and those of § 3104.

6. The property is owned by the Applicant, who proposes to lease it to Ms. Andrea Marinkovich. She proposes to live in the third floor and part of the second, and to use the remaining space on the second floor and the entire first floor for art gallery purposes.

The Proposed Art Gallery

7. Ms. Marinkovich has, for the last 9 years, operated a small art gallery at 1506 21st Street, N.W. She proposes to move into Applicant's building in order to increase the size of her gallery.

8. The proposed art gallery, Burton Marinkovich Fine Arts, (hereinafter referred to as the "gallery") will be operated by Ms. Marinkovich and her partner, Mr. Royce Burton. The gallery will have one employee, a paid intern, who works from 20 to 32 hours per week. Ms. Marinkovich works at the gallery approximately 10 hours per week, with Mr. Burton on site during the rest of the time the gallery is open.

9. The gallery will receive one delivery of framed art per week. There will be no loading or unloading associated with this delivery. The deliveryperson will park his vehicle and carry the art to the gallery.

10. The gallery will ship purchased art to clients via a commercial shipper, but this will not involve any loading or unloading at the gallery site.

11. The gallery will be a low-key operation which will not attract much pedestrian or vehicular traffic to the neighborhood. Its hours will be 10:00 a.m. to 6:00 p.m., exclusive of evening special events.

12. The gallery will not attract impulse buyers, as an average individual sale will range from $6,000 to $10,000, although some sales may be as low as $50.00.

13. The gallery will host special events, specifically private, "by invitation only" events and events open to the public, such as "First Friday" gallery walks. The First Friday events have been occurring in the neighborhood for approximately 10 years. They are open to the public and people are encouraged to stroll through the neighborhood and visit the open galleries. They occur 10 times each year, on the first Friday of the month, from 6:00 to 8:00 p.m. Private events will take place in the evening, between the hours of 6:00 and 9:00 p.m. and will be by invitation only. It is anticipated that during each private event, a maximum of approximately 100 people would attend, with possibly 30 to 40 people at the gallery at any one time.

14. At special events, the gallery will serve light fare and beverages, including beer and wine, but not including hard liquor. No events at the gallery will be catered.

15. The gallery will have unobtrusive security lighting directed at the Applicant's building.

16. The gallery will not make any architectural or structural changes to the exterior of the property and will continue to use the current doorway to the ground floor of the premise. Nor will the gallery make any significant changes to the interior of the structure which would in any way preclude its future use as a wholly residential building.

17. The gallery will display one small, unobtrusive sign on the exterior façade of the building.

18. The Board credits the testimony of Ms. Marinkovich, Mr. Burton, and the Applicant's zoning expert, Mr. Williams, that the gallery will create no objectionable conditions in the neighborhood.

19. The Board finds that the gallery is not likely to become objectionable to adjoining and nearby property because of objectionable noise, pedestrian and vehicular traffic, hours of operation, or other objectionable conditions.

The Surrounding Area

20. The area in which the subject property is located has diverse uses within it, including, on the same block, two other art galleries and a building used by the Republic of Chad.

21. There are approximately 10 art galleries, including the Phillips Collection, currently operating within about a 2-block radius of the subject property. There has, however, been an overall net decrease in the number of galleries in the neighborhood within the last 10 years, with approximately 5 closed galleries re-converted to residential use, as well as an increase of over 1,000 units of housing within the Dupont Circle area between 1990 and 2000.

22. The subject property is located 1 block west of Connecticut Avenue and within reasonable walking distance of a Metro station.

23. There are several commercial parking garages available to the public within reasonable walking distance of the subject property.

24. The Board finds that the opening of the gallery will not change the character of the neighborhood from residential to commercial and that it will not in any other way adversely affect the present character or future development of the surrounding area.

CONCLUSIONS OF LAW

The Board of Zoning Adjustment is authorized to grant special exceptions where, in the Board's judgment, a special exception would 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 property in accordance with the Zoning Regulations and Zoning Maps. D.C. Official Code § 6-641.07)g)(2) (2001); 11 DCMR § 3104. Special exceptions are deemed to be compatible uses in the zones in which they are allowed and if the Board finds that the special exception application satisfies the conditions imposed by the regulations, the application must be granted. *See, e.g., First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment,* 432 A.2d 695, 698 (D.C. 1981).

The Applicant is seeking a special exception pursuant to 11 DCMR §§ 3104 and 361 to open an art gallery in an R-5-B zone district. The requirements imposed by § 361 can be grouped into three categories. Sections 361.2 and 361.5 concern any potential adverse affect on the surrounding area and nearby properties due to objectionable conditions, such as noise or pedestrian or vehicular traffic. Section 361.4 mandates that the gallery provide adequate off-street parking to accommodate occupants, employees and visitors. Lastly, §§ 361.3 and 361.6 direct the Board to consider and control the physical design of the structure housing the gallery and the operation of the gallery itself if necessary to protect adjacent and nearby properties. Pursuant to these last two sections, the Board has conditioned the granting of this special exception, as set forth below.

The bulk of the testimony at the hearing centered on potential adverse impacts to the neighborhood generated by the gallery. The testimony of Ms. Marinkovich, Mr. Burton and the Applicant made it clear that the gallery was a use of low-scale intensity, which, if run responsibly, would have no adverse impact on adjacent or nearby properties. There was no testimony as to potential problems with signage, noise or light generated by the gallery. The major adverse impacts feared by the opposition, the ANC and OP were loss of residential space, leading down a slippery slope toward a change of the residential character of the neighborhood, and parking and traffic congestion.

Loss of Residential Space and Alleged Change in Neighborhood Character

The Board finds that the negligible loss of residential square footage as a result of the opening of the gallery does not militate against the granting of the special exception. There is no loss of a residential building, merely a change of use of some of the square footage within the building. The gallery is not making any changes to either the exterior or the interior of the building which would somehow prevent or make more difficult the future conversion of the building back to full residential use.

The Board notes that the immediate neighborhood recently lost two small apartment buildings with the expansion of the Phillips Collection, which is located just one block from the proposed gallery. The expansion was very controversial in the community and may have sensitized it to any more gallery use within the neighborhood. There is no evidence, however, that one more small gallery will lead to loss of residential character and somehow lead to a *de facto* commercial re-zoning of the area. Whether the Zoning Commission may later decide to rezone this area is not a relevant issue for this Board and would, in any event, be a speculative inquiry.

Section 350.1 permits, in an R-5 zone, "those institutional and semi-public buildings that would be compatible with adjoining residential uses." Therefore, R-5 zoning provides for a mixed-use neighborhood and the Applicant's building is a mixed-use building. Further, in 1988, the Zoning Commission, in Order No. 558, specifically declined to end the ability of galleries to locate in residential zones, making them instead subject to the

special exception process and thereby legally deeming a gallery a compatible use within such zones. In fact, Order No. 558 states that the Commission "is not persuaded that an art gallery is a hostile use in residential zones simply because it is not classified as a residential use." Zoning Commission Order No. 558, at 3 (1988).

During the hearing and in the OP Report, there was much concern that the neighborhood had reached a "tipping point," in which the balance between residential and non-residential uses had somehow tipped away from the residential and that the opening of this gallery either would be the cause of this "tipping" or would further "tip" the balance. The Board, in any special exception analysis, looks to present and potential future impacts, individual, as well as cumulative, and here perceives OP's "tipping point" concerns as going to the "present character and future development of the surrounding area," as stated in §361.5. After carefully reviewing and considering the record, and duly weighing the concerns expressed by OP and the ANC, the Board concludes that the opening of this small gallery will not adversely affect the present character or future development of the surrounding area in the manner suggested.

Parking

In this case, there is no parking required by Chapter 21 of the zoning regulations. The residential portion of the building does not require off-street parking because it is a pre-1958 building. *See,* § 2100.1. The gallery portion of the building does not require off-street parking because it is less than 3,000 square feet in size. *See,* § 2101.1. Instead, § 360.4 requires that the gallery provide adequate off-street parking. Section 360.4's mandate of adequate off-street parking is to ensure, in the context of the special exception, that parking for the gallery will not have an adverse impact on the neighborhood. The subject property has one parking space in the garage and two adjacent spaces. Ms. Marinkovich testified that two of these spaces would be reserved for use by visitors to the gallery. The Board concludes that this is adequate off-street parking to meet the needs of the gallery. The two spaces are adequate, and are augmented by the gallery's proximity to several local public garages and a Metro station.

The ANC's Recommendation

The Board is required to give "great weight" to both OP's recommendation and to the issues and concerns raised by the ANC. D.C. Official Code §§ 6-623.04 and 1-309.10(d) (2001). The Board must articulate why the ANC does or does not offer persuasive advice, discussing each of the ANC's issues and concerns. *Id.* The Board seriously considered the positions of both OP and the ANC and has found them unpersuasive. Both OP and the ANC were concerned with the "tipping point" issue, which was unsubstantiated by the record.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the

application for the special exception under §§ 3104 and 361 for the operation of an art gallery in an R-5-B zone district. The Board further concludes that the special exception can be granted in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. It is therefore **ORDERED** that the application be **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. All gallery events shall end at 9:00 p.m. or earlier.

2. Any deliveries made for gallery events shall be made between the hours of 9:00 a.m. and 4:00 p.m.

3. There shall be no on-site food preparation at the gallery.

4. No alcoholic beverages shall be served at events open to the general public, but beer and wine may be served at private, "by invitation only" events.

5. There shall be no more than 10 gallery events per year that are open to the general public, including those events known as "First Friday" gallery walks.

6. There shall be no more than 8 private, "by invitation only" gallery events per year.

7. Private, "by invitation only" gallery events shall be restricted to a maximum of 40 guests.

8. There shall be no banners or signs on the exterior of the gallery, except a one-square-foot nameplate.

9. Invitations to the gallery shall contain information about the proximity of a Metro station and nearby parking garages.

10. Two of the three parking spaces on the premises shall be maintained solely for the use of clients and guests of the gallery.

VOTE: **4-1-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., John G. Parsons, and David A. Zaidain, to grant. Anne M. Renshaw, to deny.)

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

Each voting Board member has approved the issuance of this Order granting the application, with conditions.

FINAL DATE OF ORDER: APR 1 1 2003

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

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

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

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. 17001 of RLA Revitalization Corporation and Victory Housing, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure setback provisions under section 411 (770.6(b)) and a special exception for a zone district boundary line crossing a lot under section 2514 and, pursuant to 11 DCMR § 3103.2, a variance from the parking requirements under sections 2101 and 2115 and a variance from the loading requirements under section 2201 to construct a seven story apartment house for the elderly in the C-3-A/R-4 District at premises 14th & Irving Streets, N.W. (northeast corner) (Square 2848, All or portions of Lots 71, 867 and 824).

HEARING DATE: April 8, 2003
DECISION DATE: April 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 the Applicant, Advisory Neighborhood Commission (ANC) 1A, and to owners of all property within 200 feet of the property that is the subject of this application. The application was referred to the Office of Planning (OP) and the District Department of Transportation (DDOT) for review and report.

The OP report, filed on April 1, 2003, and through the testimony of its representative at the public hearing, recommended that the Board approve the requests for variance and special exception relief. The DDOT filed its initial report on March 31, 2003, in support of the project. The DDOT filed a supplemental report on April 7, 2003, providing additional information to clarify its position of no objection to the application.

The subject property is located within the jurisdiction of ANC 1A. ANC 1A, which is automatically a party to the application, filed a written statement in support of the application dated March 12, 2003, and filed April 3, 2003. The Board waived the rules to accept the late-filed report and determined that the report should be given great weight despite the fact that the written report did not state that a quorum was

present or the vote. ANC 1B, its boundary line being located a few blocks from the site, submitted a letter indicating its support for the project.

Councilmember Jim Graham, the councilmember for Ward 1 in which the site is located, submitted a letter in support of the project dated April 3, 2003. Councilmember Graham submitted a revised letter supporting the project at the hearing on April 8, 2003.

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 (770.6(b)), and 2514.2 and variances under 11 DCMR § 3103.2 from the strict application of the requirements of 11 DCMR §§ 2101, 2115, and 2201. No party appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the ANC's report and the Office of Planning's report 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 (770.6(b) and 2514.2 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 specific requirements for special exception relief set forth in 11 DCMR §§ 2514.2(a) through 2514.2(d) have been met.

The Board also concludes that the applicant has met its burden of proof under 11 DCMR §§ 3103.2, 2101, 2115, and 2201, 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: **3-1-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., and James H. Hannaham to approve the variances from sections 2101, 2115, and 2201, David A. Zaidain opposed to the motion, the third mayoral appointee not present, not voting).

VOTE: **4-0-1** (David A. Zaidain, Curtis L. Etherly, Jr., Geoffrey H. Griffis and James H. Hannaham to approve the special exceptions from sections 411 (770.6(b)) and 2514.2, the third mayoral appointee not present, not voting).

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

FINAL DATE OF ORDER: APR 1 1 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.

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

Civil Infraction Appeal No. 97-0002 of The New Partnership *et al.*, pursuant to § 301 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, (D.C. Law 6-42; D.C. Official Code § 2-1803.03 (2001 Ed.)), of the decision of the Rohulamin Quander, Attorney Examiner/ALJ, Department of Consumer and Regulatory Affairs ("DCRA"), Office of Adjudication (97-OAD-1786G) (NOI Nos. 035354, 035361, 031017, 031023, 035353a, 035360, 031020, 031005, 035357, 035364, 031013, 031022, 035352, 035363, 031019, 031025, 035358, 035365, 031018, 031024, 035355, 035362, 031021, 035351), finding Appellants liable for operations at 2115 Bryant Street, N.E. ("2115 Bryant") and 2106 Bryant Street, N.E. ("2106 Bryant").

HEARING DATE: February 4, 2003

DECISION DATE: April 1, 2003

DECISION AND ORDER

This appeal arises from DCRA's decision to affirm Notices of Infractions issued by DCRA on eight dates to the three appellants, New Partnership, Rodgers Brothers Custodial Services, and Innovative Recyclers, for a total of twenty-four citations. DCRA cited appellant Rodgers Brothers Custodial Services for using adjoining parcels of land, 2115 and 2106 Bryant Streets, N.E., to process municipal solid waste, an activity claimed to be outside the scope of its Certificate of Occupancy ("C of O") for recycling bulk waste paper. DCRA cited appellant Innovative Recyclers, the site operator on the parcels under a contract with Rodgers Brothers Custodial Services, for conducting operations outside the scope of Rodgers' C of O, and for failure to obtain a proper C of O in its own name. DCRA also cited appellant New Partnership by virtue of its ownership of the Bryant Street properties. The Appellants are represented by A.J. Cooper, Esq. The Appellee, the DCRA, is represented by Laura Gisolfi Gilbert, Agency Counsel, and Arthur J. Parker, Assistant Corporation Counsel. For the reasons stated below, the Board affirms the ALJ's order.

This appeal is before the Board of Zoning Adjustment ("Board") because it involves infractions of the District of Columbia Zoning Regulations. Section 301 of the Department of Consumer and Regulatory Affairs Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1803.01 (2001 Ed.)) ("Civil Infractions Act") states that appeals involving infractions of the District's Zoning Regulations "shall be entertained and determined by the District of Columbia Board of Zoning Adjustment." Section 303 of the Civil Infractions Act establishes the scope of review:

> The [BZA] shall make a determination of each appeal on the basis of the record established before the administrative law judge or attorney examiner. The reviewing agency shall set aside any . . . order that is without the observance of procedure required by law or regulations . . . or any order that is unsupported by a preponderance of the evidence on the record. The reviewing agency shall apply the rule of harmless error . . . .

It follows that the Board's review encompasses a review of DCRA's procedures, which can be found at 16 DCMR § 3100 *et seq.*

Also, because this appeal is a contested case, it is also governed by section 10 of the District of Columbia Administrative Procedures Act, approved October 21, 1968 (82 Stat. 1208; D.C. Official Code § 2-509 (2001 Ed.)) ("DCAPA").

There are two motions, filed by the Appellants, that remain to be addressed by the Board. These are the Appellants' Motion for Partial Reconsideration of the Board's Order of May 21, 2002 Denying in Part and Granting in Part Appellants' Renewed Motion to Dismiss, and Appellants' Emergency Motion to Clarify the Board's Order of May 21, 2002 Denying in Part and Granting in Part Appellants' Renewed Motion to Dismiss.

Both motions state the Appellants' contentions that DCRA failed to file the proper transcript. As the same issues were again raised in the Appellants' Brief, they will be addressed below. Appellants', however, raise two additional issues that the Board would like to resolve as a preliminary matter. In the first motion, Appellants request that the Board order the Appellees to pay one half of the costs of producing the transcript. The Board, however, is without jurisdiction to order DCRA to pay such costs. Nor has the Board ever acted otherwise, contrary to the assertion of the Appellants in their motion. As stated above, the Board's review in this case is limited to the "record established before the administrative law judge". D.C. Official Code § 2-1803.3. As long as the Board is convinced that the proper record was transmitted, as evidenced in this case by DCRA's certification on May 10, 2001, this review looks no further at DCRA's post-decision actions. Nevertheless, the Board notes that the Appellee, in its opposition to Appellants' motion, accurately cited a provision of DCRA's regulations governing appeals, which include appeals to the Board. That provision, at 16 DCMR § 3118.12, provides that "[a] respondent shall pay a filing fee of ten dollars ($10) plus the cost of preparing a transcript at the time the notice of appeal is filed.". This comports with the Civil Infractions Act, which states that the "costs of any appeal, including, but not limited to, the expense of providing a transcript of the hearing, shall be borne by the appellant. . ." D.C. Official Code § 2-1803.02.

The second additional issue is found in the second motion. There, Appellants contend that the Board's May 21, 2002, order setting a new briefing schedule did not afford the Appellants sufficient time within which to file a brief. To the extent that the Order may have limited the Appellants' ability to file an adequate brief, the subsequent action of the

Office of Zoning to reset the briefing schedule in a Second Briefing Order, which gave Appellants more than one month to file a brief, rectified this.

In addressing the appeal itself, the first step for the Board is to determine which of the multitude of issue raised are properly before it. The Appellants, in their Reply Brief, allege a number of issues that were not initially raised in their Brief. The Appellee claims that allowing those issues to be raised at that late stage would be prejudicial, as Appellee has not had an opportunity to address them in its brief. Following the example of the District of Columbia Court of Appeals, the Board will not consider any issues and corresponding arguments raised for the first time in the Appellants' reply brief. *See, e.g., Stockard v. Moss*, 706 A.2d 561, 566 (1997) ("It is the longstanding policy of this court not to consider arguments raised for the first time in a reply brief.").

In addition, at the end of its brief the Appellants include a laundry list of issues they wish to rely on to support their appeal, numbered 8 through 18. Little or no support, however, is offered in connection with any of these issues. The same can be said for issues that are merely listed at the top of page 16, on the bottom of page 17, and scattered throughout the brief. The Board again follows the example of the D.C. Court of Appeals. In *Ramos v. U.S.*, 569 A.2d 158, 162 (D.C. 1990), the D.C. Court of Appeals noted that an appellant's brief "shall contain, *inter alia*, a statement of issues and the contentions of the appellant with respect to the issues presented . . .". *See* D.C. App. R. 28 (a)(3), (4), (5). A mere listing of issues, and the occasional brief statement accompanying an issue, are therefore not sufficient. In some cases, Appellants cite to a portion of the record in which the same issues were discussed at the hearing below. However, the Appellants must do more than simply direct the Board to revisit arguments presented to the hearing examiner. They must state with particularity their contentions with respect to the ALJ's decision regarding those issues. Absent such contentions, the Board and, more importantly, the Appellee, can only guess at what the Appellant might be relying on to support these arguments, or even what those arguments might be. Therefore, the Board finds that the above-referenced issues too are not properly before it.

Also, throughout the appeal, the Appellants allege violations of their constitutional right to due process. The Board notes that the scope of the appeal is limited by the regulations and statutes listed above and is not extended to constitutional issues. *See Rhema Christian Center v. Board of Zoning Adjustment*, 515 A.2d 189, 197 (D.C. 1986).

Appellants, in their brief, also argue that the Board should have granted the appeal solely because the record before the Board is incomplete and defective, which has led to a violation of the DCAPA. The relevant provision of the DCAPA states:

> The Mayor or the agency shall maintain an official record in each contested case, to include testimony and exhibits, but it shall not be necessary to make any transcription unless a copy of such record is timely requested by any party to such case, or transcription is required by law, other than this subchapter. The testimony and exhibits, together with all papers and requests filed in the proceeding, and all material facts not appearing in the evidence but with respect to which official

> notice is taken, shall constitute the exclusive record for order or decision. No sanction shall be imposed or rule or order or decision be issued except upon consideration of such exclusive record, or such lesser portions thereof as may be agreed upon by all the parties to such case.

D.C. Official Code § 2-509(c) (2001 Ed.).

The Appellants center this portion of their argument on the transcript of the hearing below, which was included as part of the record transmitted by DCRA. Appellants allege that because this transcript was not prepared by DCRA but instead by the Appellants, it is not properly a part of the record.

The Board, however, is only concerned that the record was certified and is accurate. To this end, it notes that, on May 10, 2002, DCRA certified the record, which included tapes of the hearing below and the transcript prepared by Appellants. The Board would consider the transcript's origins if those origins are alleged to affect the accuracy of the transcript. However, the Appellants make no claim that the transcription, prepared by their own court reporter, is defective or inaccurate. Appellants merely state, in their Reply Brief at p.6, that the transcript does not include side bar arguments. Those arguments, by their very nature, are not intended to be part of the recorded proceedings.

Appellants also support their argument by zeroing in on a statement made by the hearing examiner that the Appellants (then the Respondents) transcription was not the official transcript of the proceeding, but that the "official transcript of the proceeding was the one recorded by the ALJ on DCRA's own recording equipment". This statement was made in the ALJ's decision for the case, before the appeal was filed and the corresponding record compiled. The Board cannot conceive of a reason, nor do the Appellants point a reason, that DCRA should have subsequently decided that a new transcription had to be made from DCRA's own tapes. Indeed, it is in the Appellants' interests to avoid that conclusion, as it is they who would pay the costs of such a transcription, as noted above. While the DCRA could have insisted that the Appellant prepare a transcript from DCRA's tapes, when DCRA instead certified Appellants' own transcripts, it waived any such requirement.

Moreover, Appellants state no instance where they need to refer to something in the record that is not in the materials certified by DCRA, nor do they point to any portion of the record that is misleading or in error. Nor do Appellants allege any specific prejudice from the submission of their own transcript or of any other alleged deficiency in the record. *See Watwood v. Hall*, 349 A.2d 478, 479 (D.C. 1975) ("general claim of prejudice because of inadequate record" is not ground for reversal).

Lastly, the Board notes that even if the transcript was not properly before the Board, the DCRA tapes for the hearing below were indeed transmitted as part of the record. In the absence of a request for those tapes to be transcribed, accompanied by payment for the transcription, tapes themselves meet the requirement of the DCAPA that the record contain the testimony from the hearing below.

In light of the above, the issues properly before the Board are as follows:

1. Whether the denial of the Appellants' requests to call DCRA counsel Mitchell Berger as a witness and for the issuance of subpoenas and interrogatories was in violation of DCRA's rules.

2. Whether the ALJ's "adoption" of the testimony of witnesses Shirley Washington and Vincent Ford was in violation of the DCAPA.

3. Whether the ALJ committed reversible error when he found that DCRA's Office of Compliance had the authority to issue and serve investigative subpoenas.

1. Whether the denial of the Appellants' request to call DCRA counsel Mitchell Berger as a witness and for subpoenas was in violation of DCRA's rules.

Appellants argue that the DCRA's denial of their request to call DCRA's counsel, Mitchell Berger, as a witness, and DCRA's denial of Appellants request to send subpoenas and interrogatories was an abuse of discretion, arbitrary and capricious and a denial of due process. As stated above, the Board's review is limited in scope. In its discussion of these issues, the Appellants do assert one potential ground for appeal. Appellants correctly point out that DCRA's rules states that a respondent may ask "To have subpoenas issued to compel the attendance of witnesses and the production of relevant documents upon submission of a written request to an ALJ. . ." 16 DCMR § 3109.3(d).

By requiring a person to submit a written request to the ALJ, DCRA's regulation calls for the ALJ to make a determination regarding the relevancy of a witness or production of a document. Any denial of a request for either is entitled to deference by the reviewing tribunal. *See, e.g., Kay v. Pick*, 711 A.2d 1252 (D.C. 1998). The more lenient discovery rules available in many civil or criminal proceedings do not apply to administrative proceedings in the District of Columbia unless the agency has adopted them, *In Re Herndon*, 596 A.2d 592, 595 (D.C. 1991). DCRA has made no such adoption.

Here, the Chief ALJ stated with respect to the interrogatories served on other parties, that the "Respondent has failed to follow [DCRA's] rules for seeking pre-hearing discovery" where the respondent did not submit a written request to the ALJ. (Appellants' Brief at 14). Appellants, however, do not take issue with this statement. In the absence of any contention of the Chief ALJ's conclusion, the Board fails to find reversible error.

As for the denial of its requests to subpoena documents and for the presence of Mr. Berger, the Appellants generally allege that the ALJ abused his discretion in denying the request. However, Appellants do not direct the Board to the place in the record where this alleged abuse of discretion occurred.

Moreover, Appellants again fail to allege any specific prejudice as a result of the denials. As for the documents, Appellants point to their request for a list of witness to appear on behalf of the government (Reply Brief at 9). Nowhere do the Appellants state how the failure to obtain such a list impacts them. The same can generally be said for Mr. Berger's testimony. The Appellants refer to no useful argument or defense that they were unable to present without Mr. Berger's testimony. The Appellants only allege that Mr. Berger was essential as a witness "intimately involved in the District's war against the solid waste and recycling industry" and that he had "general and specific knowledge of the issues in the instant case". (Appellants' Brief at 15). And in its Reply Brief, the Appellants argue that the testimony of Mr. Berger would help the Appellants "demonstrate its contention that the Government's purpose was to close the Appellant's business". Assuming such was the intent of the government, proof of such intent would not have automatically invalidated the NOIs. Appellants would have to make a significant showing that the enforcement action was discriminatory. *See State v. Ferro*, 189 A.D.2d 1018, 1019 592 N.Y.S 516 (N.Y. 1993) ("Defendants' vague and conclusory allegations that other facilities have not been subjected to the same treatment by [the agency] are patently insufficient to support a claim of discriminatory enforcement."). Here, appellants make no such showing. As for knowledge of the specific case at hand, the Board can see where Mr. Berger might have assisted in an understanding of the case, but that alone does not make it relevant and cannot compel his appearance.

2. Whether the ALJ's "adoption" of the testimony of witnesses Shirley Washington and Vincent Ford was in violation of the DCAPA.

Appellants next argument takes issue with statements found on Pages 18 and 19 of the ALJ's order. There, under the heading Findings of Fact, the ALJ states, with respect to Investigator Washington and Inspector Ford, that he "adopts said testimony as DCRA's official Findings of Fact".

The Appellants cite *Palmer v. BZA*, 287 A.2d 535, 538 (D.C. 1972) for the proposition that the ALJ must state with particularity the basis for its order and reasons for its decisions made. This mandate stems from the DCAPA, which states that, *inter alia*:

> The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence. . .

D.C. Official Code 2-509(e) (2001 Ed.). Indeed, the ALJ must be specific with respect to a finding of fact regarding testimony in order to avoid the mere repetition of testimony that the Court of Appeals found objectionable in *A.L.W., Inc. v Board of Zoning Adjustment*, 338 A.2d 428, 430 (D.C. 1975) ("a summary of the testimony and contentions [do not] constitute findings of fact in the absence of a statement revealing which factual contentions the Board accepts.").

Here, the ALJ seemed to imply that he simply accepted all of the witnesses statements, without further discussion or identification of the statements themselves. This alone, is probably not sufficient to be considered an adequate finding of fact. However, the ALJ's statements cannot actually be considered findings of fact when considered in the context of the order as a whole. Most of what the ALJ lists under his findings of fact section are the mere repetition of evidence and testimony, which include statements by the Appellants' own witnesses, and statements such as the ones at issue. Much included in that section is probably better termed background information, in that there is no indication that any of the contentions stated are accepted as facts by the ALJ. It is instead in the "Decision" section of the order that the majority, if not all, of the findings of fact can be found. For example, On page 27, in the "Decision" section, it is stated that "The ALJ concludes that there was substantial mount of sold waste at 2115 on all of the investigative dates in question, and that a significant amount of waste was still on deposit at 2115 in June 1997, when the investigation was concluded.". This is properly characterized as a finding of fact, accepting the contention of Ms. Washington, stated at page 12 under the findings of fact section, that her investigation revealed that there was solid waste on the subject property. That the ALJ repeated the relevant testimony earlier in the order only serves to direct the reader as to the record evidence that supported the ALJ's findings in the "Decision" section.

Although not material to the appeal, a question still remains as to what the ALJ meant by his statements purporting to adopt the testimony of the witnesses. On clue might come from the fact that the testimony of the two witnesses immediately precede the language in which the ALJ "adopts" Ms. Washington's testimony. Also, the ALJ notes in finding of fact number 14 that "None of the respondents' witnesses offered testimony that was in direct contradiction to Ms. Washington's testimony about what materials she observed on the days in question.". In this light, the statements might have been intended to imply that the credibility of the witnesses had been established. Indeed, the Appellee at oral argument offered that interpretation. Regardless, an incorrect choice of words or an action that was not demonstrated to have had any material effect on the ALJ's decision cannot constitute reversible error.

Before the Board moves on to the Appellants' next issue it must address a contention by the Appellants related to Investigator Washington's testimony. In the section of the brief that includes the above argument, the Appellants briefly take issue with the background of Ms. Washington. Appellants contend that Ms. Washington is not equipped to reach the conclusions she reached and that her testimony therefore should not have been credited over the testimony of the Appellants' witnesses at the hearing. The Board, however, is unwilling to second-guess the ALJ as to the competency of a witness without more. It is the ALJ, who presides at the hearing, who can best weigh a witness' testimony and judge the competency of those before him or her. *Hilton v. United States*, 435 A.2d 383, 388 (D.C. 1982) ("A ruling on a witness' competency should not be disturbed unless the record provides unmistakable evidence that the trial court's impressions are defective.").

3. Whether the ALJ committed reversible error when he found that DCRA's Office of Compliance had the authority to issue and serve investigative subpoenas.

The Appellants' also take issue with the ALJ's conclusion that DCRA's Office of Compliance had the requisite authority to issue subpoenas to customers of Rodger's Brothers Custodial Services. The Appellants assert that such a conclusion was not supported by the law and that it was improper for the ALJ to rely on a Mayor's Order and a DCRA policy paper that was not part of the record in reaching this conclusion. The Appellants ask that the Board reverse the ALJ's decision that the subpoenas were legally issued and that in doing so the NOIs should therefore be dismissed as a sanction for the use of evidence obtained from the illegal subpoenas.

The Board, however, sees no utility in exploring the issue of whether the subpoenas were issued illegally. Even if the Board did conclude that the agency was without authority to issue those subpoenas, and that the ALJ was therefore in error to conclude otherwise, this could not result in the dismissal of the NOIs. The Appellant fails to assert any instance where the information obtained by the subpoenas was used to support any NOI. The Appellants, in their reply brief at page 15, merely state that the "entire inquiry was infected".

Moreover, even if evidence illegally obtained was used to support the Notices of Infraction and/or the ALJ's decision, the ALJ would not have been required to exclude the evidence and dismiss the NOIs. The Appellants do not offer any administrative law precedent, nor do they offer any statutory or regulatory provision, to support their position that evidence obtained through use of an illegal subpoena should be excluded in an administrative hearing. Apparently, as alluded to by the Appellants during oral argument, they are relying on Supreme Court Fourth Amendment jurisprudence, which applies a rule of exclusion to evidence illegally obtained. *See Marshall v. Barlow's Inc.*, 436 US 703 (1978). While the application of the exclusionary rule in a criminal case is clear, *See Mapp v. Ohio*, 367 US 643 (1961) reh den 368 U.S. 871, its application in civil cases is not. Indeed, the Supreme Court declined to apply an exclusionary rule in a civil tax proceeding in *United States v. Janis*, 428 US 433 (1976) reh den 429 U.S. 874, where the court determined that the use of the rule would have no deterrent effect. Extending the exclusionary rule even further, to an administrative hearing, is therefore unwarranted.

In addition, it is not the Appellants themselves who were subpoenaed, but the persons with whom one of them does business. As a general rule, persons do not have standing to assert the violation of Fourth Amendment rights belonging to a third party. *Alderman v. United States*, 394 U.S. 165, 174 (1968); *Simmon v. United States*, 390 U.S. 377, 389 (1968) ("rights assured by the Fourth Amendment are personal rights, and that they may be enforced by exclusion of evidence only at the instance of one whose own protection was infringed by the search and seizure").

It was therefore unnecessary for the ALJ to address the issue of whether DCRA had the authority to issue the subpoenas. A subpoena issued without the proper authority need not be complied with. However, any evidence obtained as a result, if found to be relevant

and probative, may be admitted in an administrative proceeding. That the ALJ did address the issue, however, had no effect in that no evidence was suppressed. The error was therefore harmless.

Appellants also point to the fact that the ALJ, in reaching his decision on the legality of the subpoenas, should not have relied on documents not in the record. Indeed, the DCAPA provides that judicial notice of extra-record materials should not be taken without giving the parties an opportunity to address those materials. D.C. Official Code § 2-509(b) (2001 Ed.). However, even if a Mayor's Order or the policy paper could be considered the type of materials covered by this provision, relying on them without notice would be harmless error, given that the issue of whether the subpoenas were legal was not properly before the ALJ and that, as stated above, no evidence was stricken as a result of the ALJ's conclusion.

For the reasons stated above, it is hereby **ORDERED** that the administrative law judge order upholding the infractions for which the Appellants were cited is **AFFIRMED**.

VOTE: **3-0-2** (John G. Parsons, Curtis L. Etherly and Geoffrey H. Griffis, to approve; David A. Zaidain, Anne M. Renshaw not present, not voting.)

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

FINAL DATE OF ORDER:_____

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES
PUBLICATIONS PRICE LIST

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS (DCMR)

TITLE		SUBJECT	PRICE
1	DCMR	MAYOR AND EXECUTIVE AGENCIES (JUNE 2001)	$16.00
3	DCMR	ELECTIONS & ETHICS (JUNE 1998)	$20.00
4	DCMR	HUMAN RIGHTS (MARCH 1995)	$13.00
5	DCMR	BOARD OF EDUCATION (DECEMBER 2002)	$26.00
6A	DCMR	POLICE PERSONNEL (MAY 1988)	$8.00
7	DCMR	EMPLOYMENT BENEFITS (JANUARY 1986)	$8.00
8	DCMR	UNIVERSITY OF THE DISTRICT OF COLUMBIA (JUNE 1988)	$8.00
9	DCMR	TAXATION & ASSESSMENTS (APRIL 1998)	$20.00
10	DCMR	DISTRICT'S COMPREHENSIVE PLAN (PART 1, FEBRUARY 1999)	$33.00
10	DCMR	PLANNING & DEVELOPMENT (PART 2, MARCH 1994) w/1996 SUPPLEMENT*	$26.00
11	DCMR	ZONING (FEBRUARY 2003)	$35.00
12	DCMR	CONSTRUCTION CODES (NOVEMBER 1999)	$20.00
13	DCMR	ELECTRICAL & MECHANICAL CODE (MARCH 1987)	$10.00
13B	DCMR	BOILER & PRESSURE VESSEL CODE (MAY 1984)	$7.00
14	DCMR	HOUSING (JULY 1991)	$20.00
15	DCMR	PUBLIC UTILITIES & CABLE TELEVISION (JUNE 1998)	$20.00
16	DCMR	CONSUMERS, COMMERCIAL PRACTICES & CIVIL INFRACTIONS (JULY 1998) W/DECEMBER 1998 SUPPLEMENT	$20.00
17	DCMR	BUSINESS, OCCUPATIONS & PROFESSIONS (MAY 1990)	$26.00
18	DCMR	VEHICLES & TRAFFIC (APRIL 1995) w/1997 SUPPLEMENT*	$26.00
19	DCMR	AMUSEMENTS, PARKS & RECREATION (JUNE 2001)	$26.00
20	DCMR	ENVIRONMENT - CHAPTERS 1-39 (FEBRUARY 1997)	$20.00
20	DCMR	ENVIRONMENT - CHAPTERS 40-70 (FEBRUARY 1997)	$26.00
21	DCMR	WATER & SANITATION (FEBRUARY 1998)	$20.00
22	DCMR	PUBLIC HEALTH & MEDICINE (AUGUST 1986)	$26.00
22	DCMR	HEALTH CARE & COMMUNITY RESIDENCE FACILITIES SUPPLEMENT (AUGUST 1986 - FEBRUARY 1995)	$13.00
23	DCMR	ALCOHOLIC BEVERAGES AND FOOD (JUNE 1997)	$20.00
24	DCMR	PUBLIC SPACE & SAFETY (DECEMBER 1996)	$20.00
24	DCMR	CHAPTER 5 - VENDORS & SOLICITORS (MAY 1996)	$9.00
26	DCMR	INSURANCE (FEBRUARY 1985)	$9.00
27	DCMR	CONTRACTS AND PROCUREMENT (JULY 1988)	$22.00
28	DCMR	CORRECTIONS, COURTS & CRIMINAL JUSTICE (MAY 1987)	$20.00
29	DCMR	PUBLIC WELFARE (MAY 1987)	$8.00
30	DCMR	LOTTERY AND CHARITABLE GAMES (MARCH 1997)	$20.00
31	DCMR	TAXICABS & PUBLIC VEHICLES FOR HIRE (DECEMBER 1998)	$16.00

Publications Price List (Continued)

OTHER PUBLICATIONS

1994 - 1996 Indices	$52.00 + $5.50 postage
1997 - 1998 Indices	$52.00 + $5.50 postage
Complete Set of *D.C. Municipal Regulations*	$627.00
D.C. Register yearly subscription	$195.00
Rulemaking Handbook & Publications Style Manual (1983)	$5.00
*Supplements to D.C. Municipal Regulations	$4.00

MAIL ORDERS: Send exact amount in check or money order made payable to the D.C. Treasurer. Specify title and subject. Send to: D.C. Office of Documents and Administrative Issuances, Room 520, One Judiciary Square, 441 - 4th St., N.W., Washington, D.C. 20001. Phone: 727-5090

OVER THE COUNTER SALES: Come to Rm. 520, One Judiciary Sq., Bring cash, check or money order.

All sales final. A charge of $65.00 will be added for any dishonored check.