

**INTEGRATED DESIGN AND ELECTRONICS ACADEMY (IDEA)
PUBLIC CHARTER SCHOOL
1027 45TH Street, N.E.
Washington, DC 20019**

NOTICE OF A REQUEST FOR BID PROPOSALS

Project Management (Owners Representative Services)

The INTEGRATED DESIGN and ELECTRONICS ACADEMY (IDEA) Public Charter School, in accordance with D.C. Code section 31-2853.14(c)(I)(A), is currently soliciting bids for project management and Request for Proposal development services for the addition of a Health and Wellness Center to a former public school building, located at 1027 45th Street, N.E., Washington, DC. More specifically, IDEA Public Charter School seeks to award a contract to a company or development team of companies, which will provide the following services:

Overall Project Management: An individual assigned by the company or development team will be the one point of contact between IDEA and the company or development team. This individual or individuals will serve as liaison between IDEA and the institution financing the construction work and will develop the Construction and Design Request for Proposal. Project management services will include but are not limited to overseeing, supervising and coordinating construction, mechanical, electrical and other tradesman and laborers in the completion of the planned facility. The project management team will develop project schedules, budgets, project tracking and reporting, cost controls as well as other duties that support project management services.

Bid Proposals will be received at IDEA PUBLIC CHARTER SCHOOL, 1027 45th Street, N.E., Washington, DC 20019 until 2:00 PM (EST), ***December 18, 2008***. All bids must be marked IDEA PCS Project Management, Attention: Colonel(R) Norman N. Johnson, RFP – Health and Wellness Center. Copies of the bid specifications or Scope of Work can be obtained from the IDEA Public Charter School, 1027 45th Street, N.E., Washington, DC 20019, on or after 2:00 PM, ***December 9, 2008***. Please call SFC Travers at (202) 399-4750 ext 205 to make a reservation to pick up the bid specifications. The bid specifications will contain the scope of work for the project management. The contract will be awarded to a qualified Bidder based on the use of Evaluation Criteria contained in the bid package. Bids will be analyzed to ascertain qualifications and past experience, the range of total professional services supplied by the company or development team and the competitiveness of the initial proposed guaranteed maximum cost for the services.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PUBLICATION OF FINAL RULEMAKINGFORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION OF THE PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

1. The Public Service Commission of the District of Columbia ("Commission") pursuant to the D.C. Official Code, 2001 Ed. § 2-505 and § 34-802, hereby gives notice of final rulemaking action, repealing and adopting a new Chapter 3 of Title 15 of the District of Columbia Municipal Regulations ("DCMR"), commonly referred to as the "Consumer Bill of Rights" ("CBOR"). The Commission issued a Notice of Proposed Rulemaking ("NOPR") which was published in the *D.C. Register* on July 25, 2008, giving notice of the Commission's intent to adopt Chapter 3 of Title 15 DCMR.¹ Comments were filed in response to the NOPR; however, after reviewing all comments, the Commission determined that further revisions were unwarranted. On September 26, 2008, a Notice of Final Rulemaking ("NOFR") was published in the *D.C. Register* with an effective date of January 1, 2009.² The parties requested and the Commission subsequently granted an extension of the effective date of the new CBOR.³ The new effective date is September 25, 2009.

2. As indicated in the NOPR, the regulations update the existing CBOR, which was developed to address the provision of utility services in a traditionally regulated environment, to reflect the competitive nature of the energy and telecommunications industries and to provide appropriate safeguards for consumers who purchase services in this new, more competitive environment. The replacement of the existing rules with the new provisions will: promote administrative efficiency; create uniformity of requirements and responsibilities for the utilities, competitive energy and telecommunications service providers, and consumers; and inform members of the public of their rights and responsibilities regarding electric, natural gas, and telecommunications services in the District of Columbia. Accordingly, the Commission hereby adopts Chapter 3 of Title 15 DCMR governing the Consumer Bill of Rights as contained in the *D.C. Register* on July 25, 2008. The rules will become effective September 25, 2009. This General Notice also appears as a NOFR in this same edition of the *D.C. Register*. Copies of the rules may be obtained by contacting Dorothy Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, D.C. 20005. Copies may also be obtained on the Commission's website at www.dcpsc.org.

¹ 55 *D.C. Register* 8015-8076 (July 25, 2008). In an effort to propose comprehensive rules, the Commission previously published several NOPRs. See 51 *D.C. Register* 11065-11152 (2004); 53 *D.C. Register* 7657-7716 (2006); 54 *D.C. Register* 7292-7353 (2007); and 55 *D.C. Register* 3899-3961 (2008). The Commission considered all comments received on various provisions throughout the process and now adopts final rules.

² 55 *D.C. Register* 10014 (2008).

³ *Formal Case No. 712* ("F.C. 712"), *In the Matter of the Investigation Into the Public Service Commission's Rules of Practice and Procedure*, Order No. 15128, issued November 26, 2008.

**ROOTS PUBLIC CHARTER SCHOOL
REQUESTS FOR PROPOSALS**

Special Education Provider

RPCS is in need of a Special Education Provider for special ED services including speech for up to four (4) students needing services with a maximum of fifteen (15) hours a week. Starting period of services will be the week of January 5, 2009 until the first week of June 2009.

All proposals should be sent to:

The Principal,
Roots Public Charter School,
15 Kennedy St. NW,
Washington, DC 20011.

For further information, please contact the Principal at (202) 882-8073.
Email: bthompson@rootspcs.org.

The deadline for proposal submission is Tuesday, December 16, 2008.

Winning contract will be notified on Monday, December 22, 2008.

DC STATE BOARD OF EDUCATION**NOTICE OF PUBLIC MEETING****DC State Board of Education Vote**

The DC State Board of Education will hold a public meeting to vote on the Early Learning Standards, Truancy Regulations, Teacher Preparation Standards, and Education in the 21st Century.

Should anyone wish to testify before the DC State Board of Education, they should notify the State Board of Education office by close of business December 15, 2008. They should also bring fifteen (15) copies of their testimony to the meeting.

Wednesday, December 17, 2008

5:30 pm

First Floor Chambers

441 4th Street, NW

Washington, DC 20001

Contact: Beverley R. Wheeler (202) 741-0884

Beverley.wheeler@dc.gov

WILLIAM E. DOAR, JR. PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

The William E. Doar, Jr. Public Charter School for the Performing Arts, in compliance with Section 2204 (C) of the District of Columbia School Reform Act of 1995 hereby solicits expressions of interest in the form of proposals with references from qualified vendors for any of the services listed below.

HR – including Payroll
AR/AP
Federal Entitlements Reporting
Accounting/Tax preparation/Audit assistance/Prep
Bookkeeping
Budgeting/Planning
Monthly, Quarterly, Grant, Federal, Annual reporting
Billing/Collections
Managing cash donations and valuation of in-kind gifts
Policy advice

Services requested for fiscal year ending 6/30/08 to commence immediately but no later than January 31, 2009.

Must be able to provide onsite assistance on a regular basis, i.e. weekly or bi-weekly.

Contractor or Firm will work with on-site business associates and administrative staff and will report directly to the Executive Director.

Must be available for monthly finance committee conference calls.

Firms or contractors must have charter school experience. Firms or contractors may submit proposals for all or part of the listed services. Proposals should include references for verification purposes.

4 printed copies of proposals are due by mail or e-mail no later than COB Friday, December 19, 2008. No late proposals will be accepted. Appointments for presentations will be arranged at the school's discretion only after review of proposals has occurred.

Proposals should be sent to:

Julie S. Doar-Sinkfield
Executive Director
William E. Doar, Jr. Public Charter School for the Performing Arts
705 Edgewood Street, NE
Washington, DC 20017

Questions only to: jdoarsinkfield@wedjschool.us

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

Application No. 17431-A of King's Creek, L.L.C., pursuant to 11 DCMR § 3104.1 and 3103.2, for a special exception to allow a building height of 50 feet in the Reed Cooke Overlay, under § 1403, and a variance to permit an addition to a nonconforming structure under subsection 2001.3, a variance from the floor area ratio requirements of § 402, and a variance from the court requirements under § 406, to allow an addition to, and conversion of, an existing building, for residential use in the RC/R-5-B district at premises 2329 and 2335 Champlain Street, N.W. (Square 2563, Lots 103 and 816).

HEARING DATE: February 28, 2006 and March 14, 2006

DECISION DATES: May 2, 2006

**DECISION ON MOTION FOR
MINOR MODIFICATION:** November 18, 2008

**ORDER GRANTING MODIFICATION OF APPROVED PLANS
AND EXTENSION OF ORDER IN APPLICATION NO. 17431**

Request for modification of approved plans

On October 31, 2008, the Applicant submitted a letter with the accompanying filing fee requesting a modification to the plans approved in BZA Application No. 17431. Copies of the letter were simultaneously served on the Office of Planning, Advisory Neighborhood Commission 1C, and John Holmes, a party in opposition during the original proceedings. The original Board approval (Application No. 17706) was for a special exception and several variances to permit the adaptive reuse of an existing commercial building for residential purposes, and was granted on November 28, 2006. Under § 3130 of the Zoning Regulations, the Order granting approval was to expire on or about November 28, 2008.

The Applicant also requested that the Board waive the rule under § 3129.3 requiring requests for modification to be filed not later than six (6) months after the date of the final order approving the application. The Applicant contended that since the time of approval, the District's residential real estate market had experienced a severe downturn. As a result, in July 2008, Mr. Kostelac, builder/manager of King's Creek LLC (the original Applicant), signed over the Partnership to the lender, Gourley & Gourley LLC Private Banking. The lender (the current Applicant) has undertaken a redesign of the project and has spent a considerable amount of time attempting to reduce construction costs and improve the economics of the project, particularly given the downturn of the global economy, the credit freeze in the banking world and the difficult housing market. As a result, the Applicant was unable to file this request within six (6) months of the date on which the order was approved. In light of the above circumstances, the

BZA APPLICATION NO. 17431-A

PAGE NO. 2

Applicant has demonstrated the good cause necessary to waive the 6 month time limit under § 3129.3. In addition, the Board finds there will be no prejudice by accepting the motion at the current time. Therefore, the Board waives the requirement under § 3129.3 and will consider the Applicant's request for modification.

The proposed modifications

The project approved by the Board in Application Number 17431 was a new apartment building that was designed and planned as a condominium project. Thus, all of the residential units were intended to be offered for sale. However, because the condominium market in the District of Columbia (and nationwide) has stalled and is predicted to not recover for several years, the Applicant has been forced to redesign the project and convert it from condominium to a rental apartment building and to undertake numerous and significant cost-cutting efforts in order to reduce construction costs and make the units affordable to the rental market. Accordingly, the Applicant requests permission to make the following modifications to its plans:

1. All previously approved five (5) rooftop hot tubs for five (5) of the six (6) residential units located on the fourth floor of the building have been eliminated. Although these changes are not visible from the street level, it is believed that the elimination of the private rooftop hot tubs reduces parts of the total bulk of the building.
2. In order to accommodate smaller units more typical of rental apartment building, all previously approved private penthouse levels and rooftop terraces of each of the fourth floor residential units have been eliminated and, instead, the revised penthouse level will be accessible to all residents. Accordingly, all stairs to private rooftop terraces previously located within the fourth floor residential units have also been eliminated. Consequently, stair #2 has been modified to extend to the penthouse level. A new stair (stair #3), allowing a second means of egress, has also been added between fourth floor and the penthouse level. The revised penthouse level houses a resident's lounge, a fitness room and two (2) ADA compliant restrooms and allows residents to access the entire rooftop terrace. The total area of the revised penthouse level has been reduced by four hundred (400) square feet from that previously approved. Although these changes are not visible from the street level, it is believed that the reconfiguration and reduction in size of the penthouse level will enhance the potential economics of the project.
3. As a result of the addition of a new staircase (stair #3) and the elimination of the private rooftop terraces and private penthouse levels, all six (6) fourth floor residential units have undergone floor plan reconfiguration to accommodate the relocation of mechanical units and provide adequate space for circulation within the units.

The ANC's request for a postponement

Advisory Neighborhood Commission ("ANC") 1C submitted a letter dated November 12, 2008, (Exhibit 58) to the Board requesting it to postpone the consideration of this motion. The ANC explained in its letter that, while it had met on November 5, 2008 with a quorum present, the ANC needed "sufficient time to allow notice and review by members of the community at large,

BZA APPLICATION NO. 17431-A

PAGE NO. 3

and to allow full consideration by vote of any proposed alterations, or changes...at the next general session meeting of ANC 1C on December 3, 2008". (Exhibit 58). No one appeared on behalf of the ANC at the Board's Decision Meeting¹ on November 17, 2008. However, the Applicant appeared and explained that a time delay in the Board's decision would create an undue financial hardship and effect the viability of the project. The Applicant also explained that the latest revisions to the rooftop terrace were submitted to the Board in direct response to the wishes of the ANC, as expressed to the Applicant at an ANC meeting. After due consideration of the ANC's request, the Board denied the request for postponement, finding that the ANC had not established good cause to postpone and that the Applicant would be prejudiced by a delay. The Board also noted that the ANC had supported the original application.

The request to modify the plans is granted

The Board finds the requested modifications are minor in nature and do not change the material facts that the Board relied upon in approving the application. No additional zoning relief is needed as a result of these minor modifications. The reconfigurations do not affect the exterior design of the building as viewed from street level, nor do they increase the footprint of the building. They do not increase the BZA approved FAR, lot occupancy, building height or any other zoning requirement and do not impact the number of units nor that of the parking spaces provided in the building. (See, OP Supplemental Report, Exhibit 57). The modification request is a direct result of the conversion of the project from a condominium regime to a rental building. Furthermore, the Board agrees with the Applicant that no sacrifices have been made to the aesthetics or quality of the project neither with these requested changes nor with the conversion from a condominium regime to a rental apartment building.

Extension of Order in Application No. 17431

Finally, the Board notes that the original approval will expire on or about November 28, 2006. Although the request for a modification did not expressly request an extension of time, the Board finds that such a request was implicit. As to the merits, the same change in economic climate that led to the modification of the approved plans also justifies the grant of additional time to complete the project. Thus, the Board extends the approval of Order 17431 for two years following the date of this Order.

It is therefore **ORDERED** that the request for modification of approved plans in Order No. 17431 be **GRANTED** in accordance with Exhibit No. 59B-1- Plans, and Order No. 17431 is extended for two years from the date of this Order.

VOTE (NOVEMBR 28, 2008) ON APPLICATION NO. 17431:

¹ The Board's Rules provide that modification requests shall be decided based upon the papers. Thus, no hearing is required. 11 DCMR 3129.5

BZA APPLICATION NO. 17431-A

PAGE NO. 4

3-0-2 (Ruthanne G. Miller, Marc D. Loud and Shane L. Dettman to Grant, no other Board members participating.)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: December 2, 2008

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

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

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

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

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

Appeal No. 17675 of the Reed-Cooke Neighborhood Association (“RCNA”), pursuant to 11 DCMR §§ 3100 and 3101, from a decision of the Zoning Administrator, to allow off-premises alcoholic beverage sales as an accessory use to a Harris-Teeter grocery store in the RC/C-2-B District, at premises 1631 Kalorama Road, N.W. (Square 2572, Lot 36).

HEARING DATE: November 6, 2007

DECISION DATE: March 4, 2008

ORDER

On May 17, 2007, the Reed-Cooke Neighborhood Association (“RCNA”) filed this appeal alleging that the Zoning Administrator (“ZA”) had erred in concluding, in a letter dated March 21, 2007, that the prohibition of off-premises alcoholic beverage sales in 11 DCMR § 1401.1(b), applied to “principal uses only and not to accessory sales within a grocery store.” The ZA determined in that letter that “the subordinate sale of beer and wine for off-premises consumption is an allowable accessory use for a retail grocery store” in the Reed Cooke Overlay District. *See*, Exhibit No. 1, Attached Letter.

The Board of Zoning Adjustment (“BZA” or “Board”) held a hearing on the appeal and, at its Public Decision Meeting on March 4, 2008, concurred with the Zoning Administrator and denied the appeal by a vote of 3-0-2.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated May 21, 2007, the Office of Zoning provided notice of the appeal to the D.C. Office of Planning, the Zoning Administrator, at the Department of Consumer and Regulatory Affairs (“DCRA”), the Councilmember for Ward 1, Advisory Neighborhood Commission (“ANC”) 1C, the ANC in which the subject property is located, and Single Member District/ANC 1C07. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the hearing date in the *D.C. Register*, and sent such notice to the Appellant, the ZA, ANC 1C, and the owner of the property that is the subject of the appeal (“Property Owner”).

Party Status. The automatic parties in this proceeding were RCNA (the “Appellant”), DCRA (the “Appellee”), the Property Owner, and ANC 1C. There were no requests for party status.

BZA APPEAL NO. 17675**PAGE NO. 2**

Motions to Dismiss. As will be discussed later in the conclusions of law, both the Appellee and the Property Owner moved to dismiss the appeal as untimely. The Property Owner also moved to dismiss on the grounds of lack of standing, estoppel, and laches (Exhibits Nos. 15 and 16). The motions were denied because a majority of the Board did not vote in favor of granting or denying either. That being the case, this order will not include any findings of facts or conclusions of law relevant to the issues raised in the motions.

FINDINGS OF FACT**A. The Property**

1. The subject property is located at address 1631 Kalorama Road, N.W. (Square 2572, Lot 36), and is zoned C-2, but is also within the Reed-Cooke Overlay District (“Overlay”).
2. The Property Owner desires to redevelop the subject property with a mixed-use project that will include a grocery store, retail or service uses, and office space.
3. The new mixed-use project could not proceed under matter of right zoning, but required zoning relief, granted by this Board in Order No. 17395 of Jemal’s Citadel LLC, issued on June 12, 2006.
4. That order did not address the issues raised and resolved in this appeal.

B. Events Leading to the Filing of this Appeal

5. On September 11, 2006, the Property Owner and the operator of the grocery store (“store operator”) applied to DCRA for a building permit to construct the interior layout of the grocery store.
6. According to the plans submitted with the building permit application, the area to be devoted to the sale of beer and wine would comprise approximately 4% of the store’s total floor area and would be located within, and therefore on the same lot as, the grocery store.
7. On November 13, 2006, DCRA issued Building Permit No. 98040, permitting the construction of the interior of the grocery store.
8. The issuance of the permit has never been appealed.
9. On August 18, 2005, the store operator filed its application for a Class B Off-Premises Retail License with the D.C. Alcoholic Beverage Control Board.
10. An Off-Premises Retail License authorizes a licensee to sell alcoholic beverages “and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the

BZA APPEAL NO. 17675**PAGE NO. 3**

same was received by the licensee.” D.C. Official Code § 25-112 (a). A Class B license authorizes the sale of wine and beer, but not “spirits”. D.C. Official Code § 25-112 (d).

11. RCNA filed a protest of the application on September 25, 2005, and again, on January 7, 2006.
12. Among other things, RCNA argued that the sale of alcoholic beverages for off-premises consumption is prohibited at the subject property by 11 DCMR § 1401.1 (b).
13. The Property Owner asserted that § 1401.1 (b)’s prohibition of off-premises sales of alcoholic beverages only extended to the principal form of the use, and did not also prohibit such sales as were accessory to a permitted use, such as a grocery store.
14. Subsection § 1401.1 does not state whether its prohibitions apply only to the principal form of the uses listed or to accessory uses as well.
15. On March 21, 2007, the ZA issued a letter to the representatives of the Property Owner stating that “the restrictions in § 1401.1 (b) applies [sic] to principal uses only and not to accessory sales within a grocery store”.
16. RCNA appealed the ZA’s letter to this Board on May 17, 2007.

C. The Sale of Beer and Wine within Grocery Stores

17. It has become a common practice for grocery stores to sell beer and wine as an incidental part of their business.
18. Sixty-four grocery stores in the District hold Class B liquor licenses, authorizing the sale of beer and wine for off-premises consumption. Exhibit No. 29.
19. When established as a principal use, the sale of alcohol beverages for off-premises consumption takes the form of a liquor store, which historically has had some adverse external impacts, such as loitering, on a neighborhood.
20. The sale of alcoholic beverages for off-premises consumption by a large grocery store, such as is being constructed by the Property Owner, does not have a history of similar adverse effects.

CONCLUSIONS OF LAW**Motions to Dismiss**

Both the Appellee and the Property Owner moved to dismiss the appeal as untimely. The Property Owner also moved to dismiss on the grounds of lack of standing, estoppel, and laches

BZA APPEAL NO. 17675**PAGE NO. 4**

(Exhibits Nos. 15 and 16).

Upon completion of the portion of the Board's hearing devoted to the motions arguments, the Board decided to vote on the motions. There were, however, only three Board members participating in this appeal, which affected the outcome of the vote. Chairperson Miller moved to deny the motions to dismiss, but her motion failed for lack of a majority, with a vote of two members to deny, and one member to grant. Board member Dettman then moved to grant the motions to dismiss, but his motion also failed for a lack of a majority, with a vote of one member to grant, and two members to deny.

This Board has previously held that:

A vote that fails to generate at least three affirmative votes operates to deny the relief that was the subject of the motion, unless the Board decides to defer consideration of the matter until a new vote can be taken at a later time. *See Hubbard v. District of Columbia Bd. of Zoning Adjustment*, 366 A.2d 427, 428 (D.C. 1976) (failure to achieve number of votes required by Board rule operated as denial of motion for rehearing). See also Webster's New World Robert's Rules of Order: Simplified and Applied 62-65, 278-82 (1999) (majority vote, motions to reconsider the vote).

Application No. 16566-B of the President and Directors of Georgetown College, 49 DCR 834, 835 (2002).

The Board did not defer consideration of the motion following the two votes. Therefore, the motions to dismiss were deemed denied and the Board heard the merits of the appeal.

The Merits of the Appeal

The subject property is zoned RC\C-2-B, which means that it is located in both the C-2-B zone district and the Reed Cook Overlay district. The regulations that govern the districts constitute the zoning regulations for the geographic area where their boundaries overlap. 11 DCMR § 1400.3. Any inconsistency between the two sets of provisions is resolved in favor of the most restrictive. 11 DCMR § 1400.4.

The particular Overlay provision that the Board is called upon to interpret is 11 DCMR § 1401.1 (b), which provides:

The following uses shall be prohibited in the RC Overlay District:

...

(b) Off-premises alcoholic beverage sales.

The questions on appeal are: (1) whether the sale of beer and wine is accessory to a grocery store

BZA APPEAL NO. 17675**PAGE NO. 5**

use and, if so; (2) whether the prohibition of § 1401.1(b) extends to that accessory use.

1. The Sale of Beer and Wine for Off-Premises Consumption is Accessory to a Grocery Store Use.

An accessory use is one that is not permitted as of right within a zone district as a principal use, but is “so necessary or commonly to be expected [in relation to a principal use] that it cannot be supposed that the ordinance was intended to prevent it.” *Zahn v. Board of Adjustment of City of Newark*, 45 N.J. Super. 516, 133 A.2d 358 (App. Div. 1957). The Zoning Regulations define “accessory use” as “a use customarily incidental and subordinate to the principal use, located on the same lot with the principal use.” 11 DCMR §199.1, definition of “Use, accessory.”

Because an accessory use must be “incidental and subordinate” to the principal use, the magnitude of the principal use must be greater than that of the accessory use. The principal use must be proportionally larger, or more important, or more functionally central, than the accessory use. There is no “bright line” standard as to when an accessory use becomes so large or so important as to veer into the territory of “principal uses.” *See, National Cathedral Neighborhood Ass’n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000). However, in this case the D.C. Council has essentially recognized that up to 15% of a grocery store’s gross sales receipts may come from sales of alcoholic beverages without such sales losing their character as “incidental” to the primary purpose of selling groceries. *See, D. C. Official Code § 25-332 (2001) (moratorium on class B liquor licenses inapplicable to new or newly renovated full service grocery stores if, among other things, sale of alcoholic beverages constitutes no more than 15% of the total volume of gross receipts)*

The fact that this incidental use is “customarily” incidental is supported by the evidence in the record that sixty-four grocery stores in the District of Columbia hold Class B liquor licenses, authorizing the sale of beer and wine for off-premises consumption. Exhibit No. 29. *See also, Sevilla and Board of Adjustment II of the City of Phoenix, Arizona v. Sweat*, 450 P. 2d 424, 426-427 (Ariz. App. 1969). (“[C]ontrary to historical usage, the ordinary understanding of present day business practices is that package beer and wine are included in the term ‘groceries’ and that grocery stores normally sell package beer and wine along with other groceries.”)

The grocery store use in this case is clearly a principal use on the subject property. It will be operated as a large supermarket, part of a nationally recognized chain, and will occupy the entire main floor of the building on the subject property. The store will sell a full line of grocery items, with only approximately 4% of the store’s total floor area used for displays of beer and wine and sales of alcoholic beverages limited to no more than 15% of the total volume of gross receipts on an annual basis.

The Board therefore readily concludes that the sale of alcoholic beverages for off-premises consumption is customarily incidental and subordinate to the grocery store use, and is therefore an accessory use.

BZA APPEAL NO. 17675**PAGE NO. 6****2. Off-Premises Sale of Alcoholic Beverages as an accessory use is not prohibited within the RC Overlay.**

Title 11 DCMR §1400.3 provides that “[t]he RC Overlay district and the underlying commercial and residential districts shall together constitute the zoning for the geographic area identified in § 1400.1 [the Reed-Cooke Overlay].” 11 DCMR § 1400.4 provides that “[w]here there are conflicts between this chapter and the underlying zone district, the more restrictive regulations shall govern.”

Appellant argues that because the prohibition against off-premises alcoholic beverages sales set forth at §1401.1(b) does not distinguish between principal and accessory uses, that its “plain language” prohibits all off-premises alcoholic beverage sales. However, this provision is not to be read in isolation, but in conjunction with the regulations underlying the C-2 commercial zone. 11 DCMR § 1400.3. Moreover, it is a basic tenet of statutory construction that the plain language of a statute (and similarly, a regulation) must be determined in the context of the regulations as a whole. *See, K Mart Corp. v Cartier, Inc.*, 486 U.S. 281, 291 (1988) (courts should look “to the particular statutory language at issue, as well as the language and design of the statute as a whole” to ascertain statute’s “plain meaning), cited by Appellant at Exhibit 35 at 10.

The regulations underlying the C-2 commercial zone are set forth in pertinent part at 11 DCMR §§ 701.4 (l) & (u), §§ 721.1 and 722.3. A grocery store and the off-premises sale of alcoholic beverages are both permitted as of right in a C-2 zone by virtue of §§ 701.4 (l) & (u) and 721.1. Uses not permitted as of right are nevertheless allowed as “accessory uses customarily incidental and subordinate to the uses permitted in C-2 Districts.” 11 DCMR § 722.3. Since both uses are permitted as of right within a C-2 district, neither use falls under the purview of § 722.3. However, even if the sale of alcoholic beverages for off-premises consumption were not permitted as a matter of right use in a C-2 zone, it would be permitted as an accessory use to a grocery store because it is “customarily incidental and subordinate” to that principal use.

As directed by §1400.3, the Board must read Chapter 14 together with the regulations governing the underlying commercial and residential districts. Accordingly, in interpreting §1401.1’s prohibition of off-premises sale of alcoholic beverages, the Board looks at the prohibition in the context of what is allowed in the underlying commercial district, set forth in relevant part, at §§ 701.4 and 721.1.

Subsection 721.1 provides that “[a]ny use permitted in C-1 Districts under § 701 shall be permitted in a C-2 District as a matter of law.” Subsection 701.4 sets forth uses allowed as a matter of right in the C-1 District that by the above provision apply as well to the C-2 District, including both (l) food and grocery store and (u) Off-premises alcoholic beverage sales.

By virtue of the fact that both sets of regulations are to be read together, those uses permitted under § 701 remain permitted in the Reed-Cooke Overlay unless prohibited under Chapter 14. Neither the use as a grocery store permitted under § 701.4(l) nor “other accessory uses customarily incidental and subordinate to the uses permitted in the C-2 Districts,” permitted

BZA APPEAL NO. 17675**PAGE NO. 7**

under § 722.3, are prohibited by §1401.1 or any other provision in Chapter 14. Accordingly, the Board concludes that off-premises sale of alcoholic beverages as an accessory use to a grocery store is not prohibited under § 1401.1 or any other regulation under Chapter 14.

The Board also finds significant that § 701.4 characterizes all the uses listed under this provision as “retail establishments.” This description leads to the conclusion that “off-premises alcoholic beverages sales” under § 701.4 refers to a standalone liquor store, reinforcing the conclusion that the same words used in § 1401.1, but under the category of prohibited “uses, is intended to apply to the principal use as a liquor store and not to accessory uses to a matter of right use.

For guidance in interpreting the prohibited uses provision set forth in § 1401.1, the Board has also examined “prohibited uses” in other chapters of the Zoning Regulations, and finds that there is no uniform manner in which prohibited uses in the various chapters address accessory uses.

The Board notes that in some instances in the Zoning Regulations a list of prohibited uses does specifically distinguish principal uses. *See e.g.* § 602.1 (Commercial Residential Districts) in which five prohibited uses are specifically limited to principal uses and §902.1 (Waterfront District) where two prohibited uses are specifically limited to principal uses. However, there is no pattern of this format throughout the regulations that would lead to the conclusion that if the regulations are silent, that accessory uses are to be determined to be prohibited as well. Notably, the regulations governing overlays do expressly identify accessory uses when they are intended to be prohibited. *See e.g.* § 806.4(b) regarding the Langdon Overlay District, which expressly prohibits outdoor materials storage or outdoor processing, fabricating, or repair “whether a principal or accessory use” (emphasis added) and, §§ 1303.1, 1505.1 and 1901.3, specifically prohibiting a drive-through accessory to any use permitted in the Overlay.

It bears noting that a list of prohibited uses is but one of two ways that the zoning regulations disallow uses. The other (and most common) means is to exclude a particular use from a list of uses permitted within a zone district. As noted, the disallowance of a principal use through exclusion does not act to disallow the accessory form of the use. Yet, Appellant argues that when a use is disallowed through express prohibition, the accessory form of the use is forbidden as well. Appellant’s position is contrary to the generally accepted rule that when an ordinance disallows uses through express prohibition “accessory uses not specifically prohibited may be engaged in.” Vol. 2 § 33:2 (4th ed.) *Rathkopf’s The Law of Zoning and Planning* and cases cited therein.

Finally, interpreting § 1401.1(b) – “off-premises alcoholic beverage sales” as applying only to a liquor store - a stand-alone principal use - is consistent with the Zoning Commission’s intent as set forth in 11 DCMR § 1400.2(c), to “[p]rotect adjacent and nearby residences from damaging traffic, parking, environmental, social, and aesthetic impacts.” The impact of a liquor store on a residential neighborhood is different from that of a full-service, national-chain supermarket selling beer and wine as an accessory use. While liquor stores have historically been accompanied by such adverse impacts as loitering, full-service grocery stores selling beer and wine as an accessory use have not.

BZA APPEAL NO. 17675**PAGE NO. 8***Great Weight*

The Board is required to give "great weight" to issues and concerns raised by the affected ANC. D.C. Official Code § 1-309.10(d) (2001). Great weight means acknowledgement of the ANC's issues and concerns and an explanation of why the Board did or did not find its views persuasive. ANC 1C filed two resolutions with the Board that were voted on, at duly-noticed public meetings with a quorum present. In the first resolution, dated December 6, 2007, the ANC asserted that § 1401.1 and § 1400.4 require the store operator/Property Owner to request a special exception pursuant to 11 DCMR § 1403 in order to properly engage in the sale of alcoholic beverages for off-premises consumption. In the second resolution, dated February 6, 2008, the ANC expanded on this assertion, and argued that § 1401.1 may be ambiguous with respect to whether it includes or does not include the accessory uses allowed in the underlying C-2 zone district, but that § 1400.4 requires the Board to interpret § 1401.1 restrictively to prohibit accessory uses. § 1400.4 states: "Where there are conflicts between this chapter and the underlying zone district, the more restrictive regulations shall govern."

For the reasons set forth above, the Board does not find a conflict between § 1401.1(b) and the regulations of the underlying C-2 District. Because the Board finds that the sale of off-premises alcoholic beverages as an accessory use is not prohibited by § 1401.1(b) and is therefore allowed as a matter of right, no relief is required.

For the reasons stated, the Board concludes that the Zoning Administrator did not err in permitting the store operator/Property Owner to engage in the sale of alcoholic beverages for off-premises consumption as a matter-of-right accessory use to a matter-of-right grocery store use, notwithstanding the prohibition stated in 11 DCMR § 1401.1(b). Therefore, it is hereby **ORDERED** that this appeal is **DENIED**.

VOTE: **3-0-2** (Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman, to deny; Mary Oates Walker not participating or voting. No Zoning Commission member participating or voting.)

Each concurring Board member has approved the issuance of this Decision and Order and authorized the undersigned to execute the Decision and Order on his or her behalf.

FINAL DATE OF ORDER: NOVEMBER 13, 2008

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND 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.

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

Application No. 17847 of Patricia A. Schaub, pursuant to 11 DCMR § 3104.1, for a special exception to allow a second story addition to an existing one-family row dwelling under section 223, not meeting the lot occupancy (section 403) and court (section 406) requirements in the R-4 District at premises 1118 Park Street, N.E. (Square 987, Lot 9).

HEARING DATE: November 25, 2008
DECISION DATE: November 25, 2008 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. ANC 6A submitted a report in support of the application. The Office of Planning (OP) submitted a report in support of the application.

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

Based upon the record before the Board, and having given great weight to the OP and ANC reports, 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 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 § 3100.5, 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

BZA APPLICATION NO. 17847

PAGE NO. 2

conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 25 - Plans) be **GRANTED**.

VOTE: **5-0-0** (Ruthanne G. Miller, Marc D. Loud, Mary Oates Walker, Anthony J. Hood and Shane L. Dettman 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: November 25, 2008

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

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

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

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY

BZA APPLICATION NO. 17847

PAGE NO. 3

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. 06-46A**Z.C. Case No. 06-46A****Modification to Capitol Gateway Overlay Design Review Approval****MR BP Residential #1A, LLC, MR BP Residential #1B, LLC, MR BP Office #1, LLC, and
MR/LB BP Hotel #1, LLC****January 28, 2008**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public meeting on January 28, 2008. At the meeting, the Commission approved an application from MR BP Residential #1A, LLC, MR BP Residential #1B, LLC, MR BP Office #1, LLC, and MR/LB BP Hotel #1, LLC (the "Applicants") for a modification to a project approved pursuant to the Capitol Gateway Overlay District design review provisions (the "CG Overlay provisions") set forth in § 1604 of the District of Columbia Zoning Regulations (the "Zoning Regulations"), Title 11 of the District of Columbia Municipal Regulations ("DCMR"). Because the requested modification was deemed to be minor in nature, a public hearing was not required. The Commission determined that the modification request was properly before it under § 3030 of the Zoning Regulations.

FINDINGS OF FACT

By Z.C. Order No. 06-46, the Commission approved a new development for the property now designated as Lot 168 (formerly Lots 3, 98-118, 144-147, 161, 162, 167, 815, and 824 and a portion of a closed public alley) in Square 701 pursuant to the CG Overlay provisions. The Commission also approved a number of related variances and special exceptions for the project pursuant to § 1604.9 of the Zoning Regulations. The original application was filed by MR N Street Southeast LLC and MR Ballpark 5 LLC, the Applicants' predecessors-in-interest.

As originally approved, the project would contain approximately 762,680 square feet of gross floor area and would have an overall density of 7.44 FAR. The project was to consist of two buildings on a single record lot. The north office building (the "North Building") would be located above the entrance to the Navy Yard Metrorail station and would contain office space with preferred retail uses on the ground floor. The south residential building (the "South Building") would include two wings of residential use, a hotel, and ground-floor retail space. The proposed project was to include approximately 277,600 square feet of gross floor area devoted to office use; 105,560 square feet of gross floor area devoted to hotel use; 320,100 square feet of gross floor area devoted to residential use; and 51,010 square feet of gross floor area devoted to preferred retail uses. The Commission approved the proposed project on February 12, 2007, and Z.C. Order No. 06-46 became final upon publication in the *D.C. Register* on November 23, 2007, pursuant to 11 DCMR § 3028.9.

By letter dated November 28, 2007, counsel for the Applicants requested a modification to the approved project pursuant to § 3030 of the Zoning Regulations. The original design modifications were illustrated on the Architectural Plans and Elevations dated November 28, 2007 and marked as Exhibit 1B.

Z.C. ORDER NO. 06-46A

Z.C. CASE NO. 06-46A

PAGE 2

Based on comments from the Office of Planning ("OP"), the Applicants submitted a revised set of Architectural Plans and Elevations and a narrative discussing the proposed modifications on January 8, 2008 to replace the original submission on November 28, 2007. The plans and narrative are marked as Exhibits 6 and 7. The requested modifications would result in the following changes to the gross floor area of the approved project:

- a. The office space in the proposed project will be reduced from 277,600 square feet of gross floor area to 267,162 square feet of gross floor area;
- b. The hotel space in the proposed project will be increased from 105,560 square feet of gross floor area to 106,269 square feet of gross floor area;
- c. The retail space in the proposed project will be increased from 51,010 square feet of gross floor area to 51,022 square feet of gross floor area;
- d. The residential space in the proposed project will be increased from 320,100 square feet of gross floor area to 320,511 square feet of gross floor area; and
- e. The total gross floor area of the project will be reduced from 762,680 square feet (7.44 FAR) to 753,466 square feet (7.35 FAR).

The proposed modifications also include a number of minor design changes that were described in detail in the narrative submitted by the Applicants on January 8, 2008.

Pursuant to 11 DCMR § 3030.11, the Director of the Office of Zoning placed the request for a modification on the Commission's consent calendar for its public meeting on January 14, 2008. At its public meeting on January 14, 2008, the Commission requested the Applicants to provide additional materials to more clearly illustrate the proposed modifications to the approved plans. The Applicants filed supplemental materials with the Office of Zoning on January 22, 2008 providing clarification of the modifications as requested by the Commission. Those materials are marked as Exhibit 11A.

On January 28, 2008, the Commission held a special public meeting to consider the modification. At the meeting, the Commission voted to approve the application for a modification to Z.C. Order No. 06-46.

There was no opposition to the modification request. Advisory Neighborhood Commission ("ANC") 6D was served by the Applicant with the requested modification, but the ANC did not submit a written report. OP submitted a report, dated January 10, 2008, recommending approval of the proposed modification.

Z.C. ORDER NO. 06-46A
Z.C. CASE NO. 06-46A
PAGE 3

CONCLUSIONS OF LAW

Upon consideration of the record in this case, the Commission concludes that the proposed modification is of little or no importance or consequence and is consistent with the intent of the Commission in approving the original project in Zoning Commission Case No. 06-46. In addition, the proposed modification will not substantially impair the intent, purpose, or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map.

The approval of this modification is not inconsistent with the Comprehensive Plan. The modification is of such a minor nature that its consideration as a consent calendar item without public hearing is appropriate.

DECISION

In consideration of the Findings of Fact and Conclusions of Law set forth herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of this application for a modification of the project approved in Z.C. Order No. 06-46. The conditions of Z.C. Order No. 06-46 are hereby revised as follows:

1. The approval of the proposed development shall apply to Lots ~~3, 98-118, 144-147, 161, 162, 167, 815, and 824~~ **168** in Square 701 ~~and portions of the public alley in Square 701 closed on an emergency basis pursuant to Emergency Alley Closing Legislation.~~
2. The project shall be built in accordance with the Architectural Plans and Elevations, marked "Exhibit A" in the post-hearing filing, dated January 25, 2007, and marked Exhibit 33 in the record of Zoning Commission Case No. 06-46 ~~the case (the "Original Approved Plans"),~~ **as modified by the Architectural Plans and Elevations, marked as Exhibit 7 of the record in this case and attached as Exhibit B to the letter submitted by the Applicants to the Office of Zoning on January 8, 2008 (the "Revised Plans"), and** as **further** modified by the guidelines, conditions, and standards below.
3. The project in its entirety shall include a maximum of ~~277,600~~ **267,162** square feet of gross floor area of office space, a maximum of ~~105,560~~ **106,269** square feet of gross floor area of hotel space, a maximum of ~~51,010~~ **51,022** square feet of gross floor area of retail space, and ~~320,100~~ **320,511** square feet of gross floor area of residential space. The distribution of uses and densities shall be as shown on Sheet D1 of the **Revised Plans** ~~Architectural Plans and Elevations.~~
4. The overall maximum permitted density shall be ~~7.44~~ **7.35** FAR. In order to achieve the maximum permitted density, the Applicants shall transfer non-residential density from **other lots within the CG Overlay District** ~~Lots 33, 37-39, 43, 45, 46, 802, 803, 841, 850, and 868 in Square 700~~ **and shall transfer residential density to those same lots**

Z.C. ORDER NO. 06-46A

Z.C. CASE NO. 06-46A

PAGE 4

- by the process set forth in and in accordance with the limitations of § 1602.1 ~~and those same lots shall receive a like amount of residential density.~~
5. Except for roof structures, the maximum permitted heights of the North and South Buildings shall be 110 feet. Roof structures shall be as shown on Sheet A7 of the Original Approved Plans ~~A7 of the Architectural Plans and Elevations.~~
 6. The project shall include a minimum of 264 off-street parking spaces for residential use and 279 off-street parking spaces for hotel, office, and retail uses including vault spaces.
 7. The landscape treatment shall be as shown on Sheet L1 of the Original Approved Plans ~~Architectural Plans and Elevations~~, subject to DDOT approval.
 8. The interim plan for Half Street shall be implemented in accordance with Sheets L2 – L4 of the Original Approved Plans ~~Architectural Plans and Elevations~~. The Applicants shall maintain a construction fence on the east side of the right-of-way that will provide up to a sixty foot clear path for pedestrians on game days. The Applicants shall also provide pedestrians with overhead protection at the Metro entrance and shall direct pedestrians to the west side of the street when the stadium is not being used for games. The Applicant shall provide temporary paving of Half Street during the interim conditions period.
 9. In accordance with proposed § 1607.2, a 12-foot step back shall be provided above a height of 80 feet along Half Street, as shown on Sheets A5 of the Revised Plans and on Sheet A7 of the Original Approved Plans ~~Architectural Plans and Elevations~~.
 10. A minimum floor-to-ceiling clear height of 14 feet shall be provided in those areas designated for ground floor preferred uses, except for:
 - a. Retail 7, which shall provide a minimum floor-to-ceiling clear height of 13 feet for ground floor preferred uses;
 - b. Retail 5A, which shall provide a minimum floor-to-ceiling height of 11 feet, 6 inches for ground floor preferred uses; and
 - c. A minimum floor-to-ceiling clear height of 11 feet shall be provided for back of house space.
 11. One 55-foot loading berth, three 30-foot loading berths, and two 20-foot service/delivery spaces shall be provided for the proposed development.
 12. A minimum of 56.3%, or 51,022 ~~51,040~~ square feet, of gross floor area of the ground floor shall be devoted to preferred uses.

Z.C. ORDER NO. 06-46A

Z.C. CASE NO. 06-46A

PAGE 5

13. The new 30-foot-wide east-west connection, labeled "Monument Place" on Sheet A1 of the Revised Plans ~~Architectural Plans and Elevations~~, shall consist of a 4-foot pedestrian zone adjacent to the North Building, a 12-foot drive lane, an 8-foot vehicular lay-by lane for the hotel use, and a 6-foot pedestrian zone adjacent to the South Building. The pedestrian zones shall be demarcated with a line of bollards.
14. The vehicular circulation program for the new 30-foot-wide east-west connection shall be one-way east bound, from Half Street, S.E. to Cushing Place, S.E.
15. The Applicants shall provide sustainable building design features as set forth in "Exhibit B" of the Applicants' post-hearing filing, dated January 25, 2007 (Exhibit 33 of the record in Z.C. Case No. 06-46). At least 30% of the roof areas for the proposed development shall be green roofs.
16. The elevator from the parking garage to street level shall be located on Monument Place, as shown on Sheet A1 of the Revised Plans ~~Architectural Plans and Elevations~~.
17. The main area of the hotel lobby shall be located on the second floor of the South building with ground floor entry provided as shown on Sheet A4 of the Revised Plans ~~Architectural Plans and Elevations~~.
18. The Applicants shall rough in the plumbing for shower facilities, leaving the decision to build out the facilities to the office tenant.
19. Signage located on ~~the roof of~~ the South Building shall be consistent with the illustrations on Sheets A9 of the Revised Plans and on Sheet A9a of the Original Approved Plans ~~Architectural Plans and Elevations~~.
20. The Applicants shall contribute up to 40% of the costs for the installation of the traffic signal at Half and M Streets, S.E.
21. The Owner is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with 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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or

Z.C. ORDER NO. 06-46A

Z.C. CASE NO. 06-46A

PAGE 6

refusal of the Owner to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

Vote of the Zoning Commission taken at the public meeting on January 28, 2008: **5-0-0** (Anthony J. Hood, Gregory N. Jeffries, Curtis L. Etherly, Jr., Michael G. Turnbull, and Peter G. May to approve).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on _____.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-31

Z.C. Case No. 07-31

**(Application of Joseph C. Young, et. al. –
Map Amendment at Square 416, Lots 24, 25, 26, 27, 821, and 822)
October 20, 2008**

Pursuant to public notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on February 28, 2008, pursuant to § 102 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”), to consider an application from Joseph C. Young, Ralph Higgs, Jr., and 717–721 T Street, N.W., LLC (the “Applicants”). The application requested review and approval of an amendment to the Zoning Map of the District of Columbia to change the zoning for Square 416, Lots 24, 25, 26, 27, 821, and 822 (“Property”), from R-4 to the C-1 or a C-2 Zone District. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

FINDINGS OF FACT

1. The Applicants are owners of Lots 24, 25, 26, 27, 821, and 822, in Square 416.
2. Lots 24, 25, 26, 27, 821, and 822 occupy approximately 3,420 square feet in the southwest corner of Square 416, where T Street, N.W. intersects with 8th Street, N.W. They are developed with one-story commercial buildings fronting T Street, N.W. Immediately to the east lies Lot 801, a vacant lot. Lot 801 was formerly a ten-foot-wide alley that is now closed. The five properties to the north along 8th Street, N.W. are developed with two-story row dwellings. To the south across T Street, N.W. is an elementary school. All of these properties are zoned R-4 and are included in the Greater U Street Historic District.
3. East of Square 416, Lot 801 is a lot developed with a CVS Pharmacy that fronts on 7th Street, N.W, and Florida Avenue, N.W. The remainder of Square 416 is occupied by a large vacant lot fronting on Florida Avenue, and 8th Street, N.W. owned by the Washington Area Metropolitan Area Transit Authority (“WMATA”). Both of these properties are zoned in the C-2-B Zone District and are included in the ARTS Overlay District.
4. By memorandum dated February 29, 2008, and through testimony at the public meeting held on March 10, 2008, the Office of Planning (“OP”) recommended that the Zoning Commission set down the application for a map amendment for Lots 24, 25, 26, 27, 821, and 822, in Square 416, for a hearing to consider rezoning to ARTS/C-2-B, and to consider a rezoning to the C-2-A Zone District, as an alternative. OP further recommended that the Commission add Lot 801, in Square 416 to the rezoning case.
5. The Commission set the case down for a public hearing at its March 10, 2008 public meeting as a contested case. The Commission adopted OP’s recommendation that the Commission would consider rezoning the Property and that the Commission would consider rezoning the Property to either the ARTS/ C-2-B or the C-2-A Zone District.

Z.C. ORDER NO. 07-31

Z.C. CASE NO. 07-31

PAGE 2

6. Notice of the public hearing was provided in accordance with the provisions of 11 DCMR §§ 3014 and 3015.
7. On July 21, 2008, the Commission held a public hearing on the application. Norris Dodson, Frederick Scarboro, and Joseph Young testified in support of their application. The Applicants stated their request was to rezone the Property to a Commercial Zone District to allow for re-establishment of commercial uses on the properties, several of which have been vacant for some time. These properties had been occupied with commercial uses since at least 1954, and probably much earlier. There is no evidence that the current buildings have ever been occupied by residential uses.
8. OP recommended in its final report dated July 9, 2008, and through testimony at the public hearing, rezoning the Property to the C-2-A Zone District. The OP report stated that the C-2-A Zone District was the appropriate choice in terms of use intensity, massing, and creating a transition from development along Georgia Avenue (which becomes 7th Street one block from the Property) to the R-4 zoned residential neighborhood to the west. The report stated that the Future Land Use Map of the District Elements of the Comprehensive Plan for the National Capital (“Comprehensive Plan”) designates the Property for mixed-use consisting of low-density commercial and moderate-density residential development, and that the Zone Districts that correspond to this classification are C-2-A, C-2-B, and C-3-A. The Property also falls within the Neighborhood Enhancement Area corridor on the Generalized Policy Map between 9th Street and Georgia Avenue, N.W. The guiding philosophy of the Neighborhood Enhancement Area is to ensure new development fits in and is responsive to the existing character, natural features, and existing/planned infrastructure capacity. OP also cited land use policy LU-2.3.4: Transitional and Buffer Zone Districts from the Comprehensive Plan, which is to “maintain mixed use zone districts which serve as transitional or buffer areas between residential and commercial districts, and which also may contain institutional, non-profit, embassy/chancery, and office-type uses. Zoning regulations for these areas ... should ensure that development is harmonious with its surroundings, achieves appropriate height and density transitions, and protects neighborhood character.” Finally, the OP report cited §§ 720.3 and 720.4 of the Zoning Regulations, which state that the C-2-A Zone District are to be located in low- and medium-density residential districts and permit development of medium proportions, in support of its recommendation of C-2-A zoning.
9. Advisory Neighborhood commission (“ANC”) 1B, the ANC in which the Subject Property is located, did not submit a written recommendation in this case.
10. At the conclusion of the public hearing on July 21, 2008, the Commission took proposed action to approve the map amendment by a vote of 5-0-0.

Z.C. ORDER NO. 07-31

Z.C. CASE NO. 07-31

PAGE 3

11. Pursuant to the District of Columbia Home Rule Act, the Commission referred the application to the National Capital Planning Commission ("NCPC") for review and comment. By report and letter dated September 10, 2008, NCPC found that the proposed map amendment is not inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other identified federal interests.
12. The Commission finds that the proposed map amendment is not inconsistent with the Comprehensive Plan.

CONCLUSIONS OF LAW

The Zoning Commission's authority to amend the Zoning Map derives from the Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, D.C. Official Code § 6-641.01) ("Zoning Act"). Section 1 of the Zoning Act authorizes the Commission to regulate the uses of property in order to "promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital." D.C. Official Code § 6-641.01. Section 2 of the Zoning Act provides that the "zoning regulations shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among

other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein." D.C. Official Code § 6-641.02. Section 3 of the Zoning Act, among other things, authorizes the Commission to amend the zoning regulations and maps. D.C. Official Code § 6-641.03.

The Commission concludes that approval of an amendment to the C-2-A Zone District is consistent with the purposes of the Zoning Act. The rezoning creates a transition from the R-4 Districts in the residential neighborhood to the west, to the commercial corridors along Florida Avenue, N.W. and Seventh Street, N.W. The C-2-A Zone District is designed to be located in medium-density residential areas, 11 DCMR § 720.2, and to accommodate existing commercial strip developments. (11 DCMR § 720.5.)

In amending the Zoning Map, the Commission is constrained by the limitation in the District Charter that the Zoning Map be "not inconsistent" with the Comprehensive Plan. (§ 492(b)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 6-641.02).) The Commission concludes that approval of the requested map amendment is not inconsistent with the Comprehensive Plan. The requested map amendment

Z.C. ORDER NO. 07-31

Z.C. CASE NO. 07-31

PAGE 4

furtheres the goals of the Comprehensive Plan, and promotes orderly development in conformity with the Zone Plan as embodied in the Zoning Regulations and Map.

The Commission concludes that the requested map amendment is in the best interests of the District of Columbia and will benefit the community in which the Property is located.

The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to the affected ANC's written recommendation. ANC 1B did not make a written recommendation in this case.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. The Commission concurs with the OP's recommendation for rezoning the Subject Property to the C-2-A Zone District, and has given its recommendation the great weight to which it is entitled."

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for an amendment of the Zoning Map to change the zoning of Lots 24, 25,

26, 27, 801, 821, and 822 in Square 416 from the R-4 Zone District to the C-2-A Zone District.

At the public hearing on July 21, 2008, the Zoning Commission voted to **APPROVE** the application for proposed action by a vote of 5-0-0 (Anthony Hood, Gregory N. Jeffries, Michael G. Turnbull, Peter May, and Curtis Etherly, Jr. to approve).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on October 20, 2008, by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull, and Peter G. May to adopt; Curtis L. Etherly, not present, not voting).

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

**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 (MARCH 2007)	\$20.00
4	DCMR HUMAN RIGHTS (MARCH 1995).....	\$13.00
5	DCMR BOARD OF EDUCATION (DECEMBER 2002).....	\$26.00
6A	DCMR POLICE PERSONNEL (JUNE 2007).....	\$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, OCTOBER 2007)	\$70.00
	+ \$10.00 for postage	
10	DCMR PLANNING & DEVELOPMENT (PART 2, MARCH 1994) w/1996 SUPPLEMENT*	\$26.00
11	DCMR ZONING (FEBRUARY 2003)	\$35.00
12	DCMR CONSTRUCTION CODES SUPPLEMENT (MARCH 2007).....	\$25.00
13B	DCMR BOILER & PRESSURE VESSEL CODE (MAY 1984).....	\$7.00
14	DCMR HOUSING (DECEMBER 2004)	\$25.00
15	DCMR PUBLIC UTILITIES & CABLE TELEVISION (JUNE 1998).....	\$20.00
16	DCMR CONSUMERS, COMMERCIAL PRACTICES & CIVIL INFRACTIONS (JULY 1998).....	\$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 (AUGUST 2004).....	\$10.00
24	DCMR PUBLIC SPACE & SAFETY (DECEMBER 1996)	\$20.00
25	DCMR FOOD AND FOOD OPERATIONS (AUGUST 2003)	\$20.00
26	DCMR INSURANCE (FEBRUARY 1985).....	\$9.00
27	DCMR CONTRACTS AND PROCUREMENT (JULY 1988).....	\$22.00
28	DCMR CORRECTIONS, COURTS & CRIMINAL JUSTICE (AUGUST 2004).....	\$10.00
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 (JULY 2004)	\$16.00

Publications Price List (Continued)

OTHER PUBLICATIONS

2000 – 2005 Indices	\$40.00 + \$10.00 postage
1994 - 1996 Indices.....	\$52.00 + \$10.00 postage
1997 - 1998 Indices.....	\$52.00 + \$10.00 postage
Complete Set of <i>D.C. Municipal Regulations</i>	\$665.00
D.C. Register yearly subscription.....	\$195.00
Rulemaking Handbook & Publications Style Manual (1983).....	\$5.00
D.C. Comprehensive Plan Maps	\$5.00
*Supplements to D.C. Municipal Regulations	\$5.00

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 check or money order.

All sales final. A charge of \$65.00 will be added for any dishonored check (D.C. Law 4-16)