

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2008

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE) located at 51 N Street, NE., Washington, D.C., intends to issue a permit to install and operate one (1) 60 kW natural gas emergency generators at the Verizon Wireless site located 1673 Park Road, N.W. Washington, D.C. 20010.

The application to construct/operate the generator and the draft permit are all 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 Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments within 30 days of publication of this notice. 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.

Comments should be addressed to:

Stephen S. Ours
Chief, Permitting and Enforcement Branch
Air Quality Division
District Department of the Environment
51 N Street, NE
Washington D.C. 20002

No written comments postmarked after January 18, 2009 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

FRIENDSHIP PUBLIC CHARTER SCHOOL
NOTICE OF REQUEST FOR PROPOSAL FOR

Friendship Public Charter School is seeking bids from prospective candidates to provide the following services:

- 1.) Sustainable Performance Management System** in accordance with requirements and specifications detailed in the Request for Proposal.

An electronic copy of the full Request for Proposal (RFP) may be requested by contacting:

Valerie Holmes
vholmes@friendshipschools.org
202-281.1722

**DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH
HIV/AIDS ADMINISTRATION**

NOTICE OF FUNDING AVAILABILITY

RFA #HAA_ADAP121908

FY 2009 Ryan White Part B AIDS Drug Assistance Program

The Government of the District of Columbia, Department of Health, HIV/AIDS Administration is soliciting applications from organizations of specialized clinical pharmacists for HIV adherence support and medication utilization analyses to provide technical support in treatment adherence services to the District of Columbia's AIDS Drug Assistance Program (ADAP), which serves indigent, uninsured and under-insured persons who are living with HIV. Not-for-profit health and support service providers are eligible to apply for grant funds under this RFA, including universities. Service providers must be located in the Washington, DC metropolitan area.

Approximately \$500,000 in FY 2009 (April 1, 2009 – March 31, 2010) Ryan White Part B AIDS Drug Assistance Program (ADAP) Grant funds are expected to be disbursed. These funds will be awarded to the District of Columbia HIV/AIDS Administration (HAA) by the U.S. Health Resources & Services Administration (HRSA) under the Ryan White Part B program contingent upon availability of funds.

The release date for this RFA is Friday, December 19, 2008. The District of Columbia, Department of Health, HIV/AIDS Administration will have the RFA available for pick up at 64 New York Avenue, NE, 5th Floor, Suite 5001 and on the following website www.opgd.dc.gov on **Friday, December 19, 2008.**

The Request for Application (RFA) **submission deadline is 5:00 pm Friday, January 16, 2009.** The Pre-Application conference will be held in the District of Columbia at 64 New York Avenue, NE, 5th Floor, Suite 5001, Washington, DC 20002, on Tuesday, December 23, 2008 from 11:00am – 12:00pm.

Applicants obtaining this RFA through the Internet should provide the HIV/AIDS Administration with the following contact information c/o Kimberly Green (kimberly.green@dc.gov) in order to receive any amendments or clarifications which might be issued.

- Name of organization;
- Key contact;
- Mailing address;
- Telephone and fax numbers; and E-mail address.

**HEALTH REGULATION AND LICENSING ADMINISTRATION
HEALTH PROFESSIONAL LICENSING ADMINISTRATION**

**Notice of Regularly Scheduled Public Meetings
Calendar Year 2008-2009**

Health Professional Boards Monthly Meetings

DECEMBER 2008

Board	Date	Time
Nursing	3	8:00 am
Pharmacy	4	9:30 am
Respiratory Care	8	9:00 am
Dietetics and Nutrition (Quarterly)	9	9:00 am
Chiropractor	9	1:00 pm
Social Work	10	9:00 am
Nursing Home Administration	11	1:30 pm
Professional Counseling	12	9:00 am
Audiology & Speech Therapy	15	9:00 am
Physical Therapy	16	3:00 pm
Medicine (cancelled)	16	9:00 am
Dentistry	17	10:00 am
Optometry (Quarterly)	18	9:00 am
Veterinary Examiners	18	10:00 am
Psychology	19	10:00 am

MEETING LOCATION

717 14th Street, NW
10th Floor
Washington, DC 20005

The locations, dates and/or times may vary. To confirm attendance and location please contact:

Deborah Y. Barnes
Executive Assistant
Government of the District of Columbia
Health Regulation and Licensing Administration
717 14th Street, NW 10th Floor
Washington, DC 20005
Phone: (202) 724-8819 | Fax: (202) 724-8677
deborah2.barnes@dc.gov

KIPP DC**REQUEST FOR PROPOSALS**

KIPP DC, 910 17th Street, NW, Washington, DC 20006, will receive bids until **December 19, 2008 at 5:00 p.m.** for the following services:

3rd Party Permit Plan Review and Inspections are needed at a campus renovation project, located at 2600 Douglass Rd., SE. A full RFP and exhibits may be obtained by contacting Alex Shawe at ashawe@kipfdc.org or at 202-223-4505.

All proposals must meet minimum requirements as outlined in the RFP.

Thanks very much.

**Alex Shawe
KIPP DC:
910 17th Street, NW – Suite 1050
Washington, DC 20006
Ph: 202-223-4505
Fax: 202-223-4505
Email: ashawe@kipfdc.org**

**WASHINGTON CONVENTION CENTER AUTHORITY
BOARD OF DIRECTORS**

NOTICE OF PUBLIC MEETINGS

The Board of Directors of the Washington Convention Center Authority, in accordance with Section 742 of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Code Section 1-1504, hereby gives notice that it has scheduled the following meetings for 2009. Meetings are held in the Dr. Charlene Drew Jarvis Board Room of the Walter E. Washington Convention Center, 801 Mt. Vernon Place, N.W., Washington, D.C. 20001, beginning at 9:00 a.m.

2009

February 5

March 5

April 2

May 7

June 4

July 9

September 3

October 1

November 5

December 3

For additional information, please contact:

Sean Sands
Special Assistant
Office of the CEO and General Manager
Washington Convention Center Authority

(202) 249-3335
sean.sands@dcconvention.com

Appeal No. 17677 of L. Napoleon Cooper, 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, December 18, 2007, January 29, 2008
DECISION DATE: March 4, 2008

ORDER

On May 25, 2007, L. Napoleon Cooper (“Appellant”) 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. 5.

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 30, 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 the Appellant, DCRA (the “Appellee”), the Property Owner, and ANC 1C. There were no requests for party status.

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. 30 and 31). 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 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. Appellant filed a protest of the application on December 16, 2005, which was dismissed by the Alcoholic Beverage Control Board because that Board determined that the Appellant had solicited a monetary contribution from the store operator in exchange for withdrawal of his protest. (*See*, Exhibit No. 30, Attachments C and D).
12. Among other things, the Appellant 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. The Appellant appealed the ZA's letter to this Board on May 25, 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 alcoholic 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 (Exhibits Nos. 30 and 31).

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-Cooke 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 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 Pheonix, 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.

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 sales of alcoholic beverages for off-premises consumption. 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.”).

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.

Section 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.” Section 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

under § 722.3, are prohibited by §1401.1 or any other provision in Chapter 14. Accordingly, the Board concludes that the sale of alcoholic beverages for off-premises consumption 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 stand-alone 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 Districts) 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.

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. Although ANC 1C was automatically a party to this appeal, it decided not to participate in the proceedings, as memorialized in its letter to the Board dated February 8, 2008. Exhibit No. 45.¹ Therefore, there is no ANC document to which the Board can accord great weight.

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 alcoholic beverages for off-premises consumption 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: DECEMBER 9, 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.

¹During the hearing on this appeal, on January 29, 2008, it was still unclear whether ANC 1C was participating in this appeal, or was only participating in the companion appeal of the Reed-Cooke Neighborhood Association, Board Case No. 17675. The February 8, 2008 ANC letter (Exhibit No. 45) makes clear that the ANC declined to participate in this appeal, No. 17677, irrespective of its decision with regard to participation in Appeal No. 17675.

Application No. 17826-A of Maret School Inc., pursuant to 11 DCMR § 3104.1, for a special exception to permit an increase in faculty, staff and student enrollment for a private school under section 206, in the R-1-B/R-3 Districts at premises 3000 Cathedral Avenue, N.W. (Square 2113, Lot 843).

HEARING DATE: October 21, 2008

DECISION DATE: November 5, 2008

CORRECTED ORDER¹

SELF-CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. ANC 3C submitted a report in support of the application. The Office of Planning (OP) also 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 relief under section 206. 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 206, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further

¹ The original order is being revised to change Condition Nos. 1 and 9 to more accurately reflect the record with regard to these conditions. The changes are shown in italics.

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 conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**, **SUBJECT to the following CONDITIONS:**

1. The maximum number of students shall not exceed 635, and the number of faculty and staff shall not exceed 129 *employed for any one period of the day*.
2. The applicant shall submit a report every other year to ANC 3C and the District Department of Transportation. The report shall provide enrollment and staffing figures and a description of the school's performance related to the transportation management plan from the preceding year.
3. The applicant shall provide a total of 139 parking spaces onsite, of which a minimum of 10 shall be dedicated to visitor parking.
4. The applicant will prohibit vehicles from making a left-hand turn onto campus from Cathedral Avenue during school drop-off and pick-up times.
5. The applicant will instruct parents not to park on, or queue on, Cathedral Avenue to wait for their children at school drop-off or pick-up times.
6. The applicant will continue to provide traffic control personnel at both ends of its driveway during school drop-off and pick-up times to facilitate on-campus traffic flow and enforce drop-off and pick-up procedures.
7. The applicant will encourage carpooling by establishing an online system to help parents identify other families along their travel route and distributing information regarding the location of other families in the area to parents at the start of each academic year.
8. The applicant will distribute a policy manual to all families prior to the start of the academic year that explains all relevant policies and procedures regarding parking, pick-up, drop-off and penalties for non-compliance. This information shall also be posted on the school's website.
9. The applicant shall subsidize *upper-class* students, faculty and staff in the use of public transportation.

VOTE: **5-0-0** (Ruthanne G. Miller, Shane L. Dettman and Mary Oates Walker to approve; Marc D. Loud and Michael G. Turnbull to approve by absentee vote)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: DECEMBER 4, 2008

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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.

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, 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 WHICH 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. TWR

Application No. 17844 of 801 Virginia Ave. LLC by Phillips Ocilla Davis Development LLC, pursuant to 11 DCMR § 3103.2, for a variance from the court requirements under section 776, and a variance from the off-street parking requirements under subsection 2101.1, to allow the construction of a new commercial office building with ground floor retail in the ES (Eighth Street Overlay)/C-3-A District at premises 801 Virginia Avenue, S.E. (Square 929, Lot 7).

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) 6B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B submitted a report in support of the application. The Office of Planning also 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 for a variance pursuant to § 3103.2. 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 Office of Planning and ANC reports filed in this case, the Board concludes that in seeking variances from § 776 and § 2101, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. Furthermore, the Board notes that the Applicant testified that it would implement a Transportation Management Plan, including providing a Transportation Services Coordinator (Exhibit 24, Tab C, and Exhibit 30).

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 conclusions

of law. It is therefore **ORDERED** that this application, pursuant to revised plans, Exhibit No. 24 of the record, be **GRANTED**.

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

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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.

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, 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 WHICH 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.

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

Application No. 17849 of St. John's College High School, pursuant to 11 DCMR § 3104.1, for a special exception to allow additions to the cafeteria and entrance vestibule and the construction of a new field house and bleachers (with no increase in students, faculty or staff) to an existing private school under section 206, in the R-1-A District at premises 2607 Military Road, N.W. (Square 2308, Lots 804 through 807).

HEARING DATE: December 2, 2008

DECISION DATE: December 2, 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) 3/4G and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3/4G, which is automatically a party to this application. ANC 3/4G 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 206. 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 206, 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 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, Gregory N. Jeffries 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: December 3, 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. RSN

**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)