

**OFFICE OF THE CHANCELLOR
DISTRICT OF COLUMBIA PUBLIC SCHOOLS**

NOTICE OF COMMUNITY FORUMS

**Proposed Revisions to Student Discipline Policy, Chapter 25 of DCMR Title V,
for the District of Columbia Public Schools**

on

Thursday, January 8, 2009

6:00 p.m. – 8:00 p.m.

Hart Middle School

601 Mississippi Ave SE

Washington, DC 20032

Tuesday, January 13, 2009

6:00 pm – 8:00 pm

Columbia Heights Education Campus

3101 16th St NW

Washington, DC 20010

Wednesday, January 28, 2009

6:00 pm – 8:00 pm

Sousa Middle School

3650 Ely Pl SE

Washington, DC 20019

The Chancellor of the District of Columbia Public Schools (DCPS) will host three community forums on the proposed revisions to Student Discipline, Chapter 25 of DCMR Title V. The forums will be held on **Thursday, January 8th, 2009 at Hart Middle School, Tuesday, January 13th, 2009 at Columbia Heights Education Campus, and on Wednesday, January 28th, 2009 at Sousa Middle School.**

The purpose of the community forums is to solicit input from the public on the proposed revisions to Student Discipline, Chapter 25.

Members of the public are invited to attend. Members of the public who cannot attend the forums but wish to provide written comments regarding the proposed revisions may submit comments to: Mr. Chad Ferguson, Office of Youth Engagement, DCPS, 825 North Capitol Street, NE, 8th Floor, Washington, D.C. 20002, or by e-mail to DCPSChapter25@dc.gov, no later than 5:00 p.m., February 17, 2009.

Copies of the proposed revisions are available at local DCPS schools or online at http://www.k12.dc.us/chancellor/schedule_forums.htm . Members of the public may also go to their local library to make a copy of the proposed revisions.

Members of the public who need interpretation services or accommodations for a disability during any one of the forums, should contact **Jennifer Nguyen** at jennifer.nguyen@dc.gov or **202-442-5191**.

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUSINESS AND PROFESSIONAL LICENSING ADMINISTRATION**

SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS

January 2009

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME/ LOCATION
Theresa Ennis	Board of Accountancy	6	10:30 am-12:00pm
Leon Lewis	Board of Appraisers	21	10:00 am-12:00 pm
Leon Lewis	Board Architects and Interior Designers	30	9:00 am-1:00 pm
Dorothy Thomas	Board of Barber and Cosmetology	5	10:00 am-4:00 pm
George Beatty	Boxing and Wrestling Commission	13	7:00-pm-9:00 pm
Dorothy Thomas	Board of Funeral Directors	8	1:30 pm-5:00 pm
Theresa Ennis	Board of Professional Engineers	22	9:30 am-1:30 pm
Leon Lewis	Board of Real Estate	13	8:30 am-12:30 pm
Pamela Peters	Board of Industrial Trades	23	5:30 pm-7:15 pm
	Asbestos Electrical Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

Dates and Times are subject to change. All meetings are held at 941 North Capitol Street, NE., Suite 7616, Washington, DC 20001. For further information on this schedule, please contact the front desk at 202-442-4320.

DISTRICT DEPARTMENT OF THE ENVIRONMENT**NOTICE OF FILING OF
VOLUNTARY CLEANUP COMPLETION REPORT**

Pursuant to § 601 (b) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001(D.C. Law 13-312; D.C. Official Code § 8-636.01(b) (Supp. 2005)), the Voluntary Cleanup Program (VCP) in the District Department of the Environment (DDOE), is informing the public that it has received a cleanup completion report in the Voluntary Cleanup Program for a property located at 2200 block of C Street, N.W. (south side of C Street). The applicant is the American Pharmacists Association, Inc., 2215 Constitution Avenue, N.W., Washington, D.C. 20037, Attn. Dr. John A. Gans, Executive Vice President. The primary environmental contaminants of concern were moderate levels of volatile organic compounds (VOCs) and chlorinated solvent compounds in the soil and groundwater. Pursuant to § 601(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission for the area in which the property is located.

The DDOE is required to consider all public comments it receives before issuing a certificate of completion. Interested persons may submit written comments on the issuance of a certificate of completion to the Voluntary Cleanup Program at the address listed below. The Cleanup Completion Report will be available for public review at the following location:

Voluntary Cleanup Program
District Department of the Environment (DDOE)
51 N Street, N.E., 6th Floor, Room 6011
Washington, DC 20002

Interested parties may also request a copy of the report for a small charge to cover the cost of copying by contacting the Voluntary Cleanup Program at the above address or calling (202) 535-1337.

Written comments on the proposed approval of the application must be received by the VCP program at the address listed above within twenty one (21) days from the date of this publication. DDOE is required to consider all public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

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

**Notice of Regularly Scheduled Public Meetings
Calendar Year 2009-2010**

Health Professional Boards Monthly Meetings

JANUARY 2009

Board	Date	Time
Nursing	7	8:00 am
Pharmacy	8	9:30 am
Nursing Home Administration	8	1:30 pm
Professional Counseling	9	9:00 am
Respiratory Care	12	9:00 am
Occupational Therapy	12	3:30 pm
Chiropractic	13	1:00 pm
Social Work	14	9:00 am
Podiatry	14	1:30 pm
Veterinary Examiners	15	10:00 am
Massage Therapy	15	1:30 pm
Psychology	16	10:00 am
Physical Therapy	20	3:00 pm
Dentistry	21	10:00 am
Audiology & Speech Therapy	26	9:00 am
Medicine	28	9:00 am

MEETING LOCATION

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

The locations, dates and/or dates 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

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD**NOTICE OF AVAILABILITY OF APPLICATION GUIDELINES
& APPLICATION REVIEW PROCESS TIMELINE**

The District of Columbia Public Charter School Board hereby gives notice that guidelines for preparing and submitting applications to establish and operate a public charter school in the District of Columbia will be made available on November 2, 2009. The guidelines will set a deadline of February 1, 2010 for the Board's receipt of applications and establish criteria for the evaluation of applicants' plans for establishing and operating a public charter school. Additionally, applicants submitting proposals to convert an existing school must submit parental conversion endorsement signatures on one of two dates—February 1, 2010 for students enrolled in Spring 2010 or July 31, 2010 for students enrolled for Fall 2010. The Board's decisions will be announced publicly on April 19, 2010. The Board is authorized to approve up to 10 charter awards in any given year.

Those interested in learning more about the application review process are invited to attend public information meetings to be held on November 12 and December 10, 2009 in the Board conference room. For more information about the application review process, please contact the District of Columbia Public Charter School Board by mail to the: District of Columbia Public Charter School Board, 3333 14th St. NW, Suite 210, Washington, DC 20010, or telephone: (202) 328-2660.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

2009 APPLICATION REVIEW PROCESS TIMELINE

2009

November 2 Release Application Guidelines

November 12
& December 10 Public information meetings

2010

February 1 Applications deadline
Parental conversion endorsement signatures due for students
enrolled in Spring 2010

February 4-5 Principal interviews

February 23-24 Applicant interviews

March 16-17 Public hearings

April 19 Board decisions announced publicly

May Feedback sessions with charter applicants

May – June Begin negotiation of charters with applicants whose applications were
approved

July 31 Parental conversion endorsement signatures due for students
enrolled for Fall 2010

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY

DC Main Streets
(Rhode Island Avenue, NE - Ward 5 Target Area)

The Department of Small and Local Business Development is soliciting applications from qualified non-profit corporations, either in existence or in formation at the time of application, to operate a DC Main Streets program for the Rhode Island Avenue, NE commercial corridor in Ward 5.

The designated DC Main Streets program (organization) will receive grant funding and technical assistance to support commercial revitalization initiatives. The Rhode Island Avenue Main Streets organization will develop programs and services to: (1) assist business districts with the retention, expansion and attraction of neighborhood-serving retail stores; and (2) help unify and strengthen the commercial corridor. The DC Main Streets grant award is a one-time non-recurring grant.

Applications and Application Guidelines will be released beginning Wednesday, December 31, 2008, to be followed by a neighborhood-based application workshop Wednesday, January 14, 2009. Applicant organizations must participate in the neighborhood workshop. Information about the workshops, including time and location, will be available on the *reSTORE* DC website (www.restoredc.dc.gov), or by calling the DSLBD Office at (202) 727-3900. Applications may be obtained at any of the workshops, or by calling the Office at (202) 727-3900. *Interested organizations should forward their email addresses to receive timely updates on the application process and requirements to restoredc@dc.gov.*

A non-binding Notice of Intent to Apply, postmarked by Friday, January 23, 2009, must be submitted by applicant organizations to DC Main Streets, Department of Small and Local Business Development, 441 4th Street, NW, Suite 970N, Washington, DC 20001. Applications must be submitted to DC Main Streets, Department of Small and Local Business Development, 441 4th Street, NW, Suite 970N, Washington, DC 20001, by 4:00 PM on Friday, February 13, 2009. An application is considered complete if all questions are answered in the allotted space, all signatures are affixed, all requested attachments are included, and the original UNBOUND application and ten (10) copies are submitted by the deadline. Applications will be evaluated by an independent review panel, which will also interview the applicant organizations that pass the first round ranking. The review panel will recommend the designation of new Main Streets programs.

For more information, contact Phyllis R. Love, Assistant Director, Office of Commercial Revitalization, Department of Small and Local Business Development at (202) 727-3900.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT
GUIDELINES

DC Certified Business Enterprise Revolving Micro Loan Fund (a Pilot Program)

PROGRAM OVERVIEW

The DC Certified Business Enterprise Revolving Micro Loan Fund (“DC CBE RMLF”) is a financing tool designed to sustain and/or increase the level of business activity, job creation and retention, and provide access to capital for the sustainability and expansion of small businesses, with emphasis on assisting small resident owned and disadvantaged businesses, as certified by the Department of Small and Local Business Development (DSLBD). Preference for financial assistance is given to businesses with primary operations and/or core clientele in target areas comprising DC Main Streets, Neighborhood Investment Fund, and special nodes designated for economic development or commercial revitalization as defined by the Office of the Mayor.

Loans issued under the DC Certified Business Enterprise Micro Loan Fund (DC CBE-RMLF) will be structured as a senior or subordinated secured loan or a loan guarantee. Loan underwriting is managed by the Washington Area Community Investment Fund (WACIF) on behalf of the Department of Small and Local Business Development. WACIF will also close and service all loans. The maximum loan amount is \$15,000. However, CBE designated businesses located within a DC Main Streets or Neighborhood Investment Fund target area, or special nodes designated for economic development or commercial revitalization may be eligible for up to \$25,000. Refer to the DSLBD website (<http://dslbd.dc.gov>) for a description of the respective target areas.

Applications are available online through the Department of Small and Local Business Development website (<http://dslbd.dc.gov>). **Completed applications, with requisite attachments, must be submitted to DSLBD.** A Certified Business Enterprise (CBE) designation is a prerequisite for applying for a loan. WACIF will not accept applications directly from businesses.

DSLBD is responsible for the pre-screening of potential borrowers. DSLBD will conduct a preliminary review of the application (See the attached Application Requirements) to ensure completeness and that all supporting documentation is included. DSLBD will notify the applicant if an unqualified application has been submitted for consideration. Applications that meet the pre-screening standards will be forwarded to WACIF for underwriting. A complete and viable application should result in a loan closing within 45 – 60 days, provided no additional information is required for underwriting purposes.

The micro loan application and guidelines are available online at <http://dslbd.dc.gov>. The completed application package must be submitted to DSLBD with the following demarcation:

Department of Small and Local Business Development
ATTN: DC Certified Business Enterprise Revolving Micro Loan Fund
441 4th St. NW, Ste. 970N
Washington, DC 20001

For more information, please contact DSLBD at (202) 727-3900 or <http://dslbd.dc.gov>.

PROJECT ELIGIBILITY

- Certified small business enterprise AND disadvantaged business enterprise (in accordance with the Department of Small and Local Business Development CBE designation)
- Certified resident-owned business (in accordance with the Department of Small and Local Business Development CBE designation)
- Business independently owned, operated, and controlled
- Business with a current Certificate of Good Standing (via the Department of Consumer and Regulatory Affairs) and Certificate of Clean Hands (via Office of Tax and Revenue)
- *PREFERENCE* - Business that serves or whose principal office is located in a DC Main Streets corridor, a Neighborhood Investment Program target area, or another area identified by the Mayor as a priority for economic development or commercial revitalization

PROJECT INELIGIBILITY

- Non-profit organization
- Start-up business (less than 3 years operating period)
- Street vendor
- Regional or national franchise

USE OF PROCEEDS

- Working capital
- Inventory
- Furniture or fixtures (acquisition/repair)
- Machinery and equipment (acquisition/repair)
- Eco-efficient improvements
- Contract cash flow assistance
- Financial management systems (e.g., Point of Sale, upgrades to meet prime contractor standards)
- Leasehold improvements
- Property renovation (property owners only)

RATES/TERMS

- A loan amount may not exceed fifteen thousand dollars (\$15,000) to any one CBE. A CBE located within a DC Main Streets or Neighborhood Investment Fund target area, or special nodes designated for economic development or commercial revitalization may be eligible for up to \$25,000. (Refer to the DSLBD website – <http://dslbd.dc.gov> – for a description of the respective target areas.)
- Terms may not exceed six (6) years
- Loan-to-Value may not exceed ninety-seven percent (97%) or debt service coverage of 1.05x
- UCC filings and verification and monitoring will be required for all appropriate security or collateral
- Principal amortization may be deferred up to one (1) year
- Interest may be deferred up to six (6) months
- Interest rate of 5% will be applied to CBE RMLF
- \$150 Application Fee (non-refundable) made payable to WACIF
- Closing Costs may be included in the loan amount, if sufficient funds are available

COLLATERAL/SECURITY

- Each loan will be secured with sufficient collateral.
- First lien on any asset purchased is required
- Personal guarantees will be required from principal owners with an ownership position greater than ten percent (10%)

TECHNICAL ASSISTANCE

- The Department of Small and Local Business Development (DSLBD) offers technical assistance (including workshops/training and professional consultation services) designed to help clients build capacity and obtain additional tools to successfully operate their business.
- DSLBD, in some instances, may require the potential borrower or borrower to participate in targeted training, technical assistance, and/or periodic monitoring to help strengthen business operations as a condition of the loan or as a pre-condition for future funding.

APPLICATION PROCESS

- Eligible businesses will complete a two-part loan application, including an In-Take form and a Loan Application, which is available from the Department of Small and Local Business Development (DSLBD).
- Completed applications will be submitted by the eligible business to DSLBD for pre-screening and preliminary review. DSLBD will forward applications that are determined to be complete (with all required documentation) to Washington Area Community Investment Fund (WACIF) for underwriting. The business will receive an email notification from DSLBD that the complete application has been submitted to WACIF for underwriting analysis and loan determination. DSLBD will also send an email to businesses that have not sufficiently completed the application and/or required documentation as notification that the application will not proceed to the underwriting phase. An incomplete application will be returned to the business.

- WACIF will evaluate applications and required attachments and apply its underwriting criteria. Loan applications will be reviewed by WACIF's Loan Committee with final loan approval issued by the Committee. WACIF will directly notify the borrower of loan approval, additional information requirements, or denial (with explanation of underwriting determination).
 - A Certified Business Enterprise (CBE) designation is a prerequisite for applying for a loan. Business interested in applying for CBE designation may complete the online application, which is available at <http://dslbd.dc.gov>. Only applications submitted through the DSLBD online database will be accepted. Businesses should allow 45 days for CBE application review (including site visit, as applicable) and "determination" (e.g., certification approval), which is measured from the timeframe that DSLBD provides the "received" notification of a completed application.
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A completed CBE Revolving Micro Loan Fund (CBE-RMLF) application will include:

1. Informational Requests

- a. Completed CBE-RMLF Intake Form including Personal Financial Statement for all principals of the business
- b. Completed CBE-RMLF Loan Application
- c. CBE Program Certification Letter
- d. \$150 Application Fee made payable to WACIF

2. Organizational Documents

- a. Articles of Incorporation or Organization
- b. Operating Agreement
- c. Organization's By-laws
- d. Certificate of Incorporation
- e. Copy of Business, Professional, and/or trade license
- f. Certificate of Occupancy
- g. Tax Certification (Clean Hands Certification from the DC Office of Tax and Revenue – OTR)
- h. Most recent Certificate of Good Standing issued by DCRA
- i. Company Profile, including executive summary, operation plan, organizational structure, marketing outline, and resumes of key personnel
- j. Lease or Deed for business site
- k. Most Recent Form UC-30 (Employer's Quarterly Contribution and Wage Report)
- l. Employee Identification Number – IRS Issuance
- m. Dun and Bradstreet (DUNS) Number
- n. Proof of Citizenship of principal owners (e.g. birth certificate, passport, or permanent resident) or legal residency documentation
- o. A copy of driver's license or DMV picture ID
- p. Borrowing Resolution

3. Financial Documents

- a. Profit & Loss for last three fiscal years and year-to-date
- b. Projected Profit & Loss for next three fiscal years
- c. Balance sheet for last three fiscal years ends
- d. Current Balance Sheet
- e. Proposed Project Budget (including Sources and Uses)
- f. Federal Tax Returns for last 3 fiscal years
- g. Personal Tax Returns for last 3 calendar years
- h. Cash flow statement for previous fiscal year
- i. Projected Cash flow statement for next fiscal year
- j. Last 3 months of business bank statements

4. Other

- a. Marketing Plan
- b. Insurance Materials
- c. Recent Appraisal or a copy Current Year Tax Assessment
- d. Environmental Survey (if applicable)
- e. Commitments for other loans/grants for the proposed projects
- f. Business Plan (Must demonstrate how loan resources will impact profitability of the business, create job opportunities, repay the loan, help to expand the business, etc.)

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA**APPOINTMENTS OF NOTARIES PUBLIC**

Notice is hereby given that the following named persons have been newly appointed as Notaries Public in and for the District of Columbia, effective on or after January 15, 2009.

Comments on these appointments should be submitted, in writing, to Naomi Shelton, Administrator, Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on January 9, 2009. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

D.C. Office of the Secretary
Appointments of Notaries PublicEffective: January 15, 2009
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Abney-Barber	Felicia	Federal Energy Regulatory Commission 888 First Street, NE	20426
Andrews	Carla L.	Self 3403 21st Street, SE	20020
Avalos	Heather B.	Gore Brothers Reporting 1025 Connecticut Avenue, NW, #1000	20036
Bierlein	Brandon Michael	Dickstein Shapiro LLP 1825 Eye Street, NW	20006
Bowie	L'Ornya	Bright Horizons 1111 Pennsylvania Avenue, NW	20004
Burkovsky	Alexander	Citibank 1901 Wisconsin Avenue, NW	20015
Conover	Cynthia A.	Troutman Sanders, LLP 401 9th Street, NW	20004
Davis	Tracy E.	DCI Group, LLC 1828 L Street, NW, Suite 400	20036
Dennis-Bright	Rowena G.	Agriculture Federal Credit Union 14th & Independence Ave., SW, SM-2 SBLG	20250
DePass	Michelle	Dickstein Shapiro LLP 1825 Eye Street, NW	20006
Dow	Debbie M.	Self 129 47th Street, NE	20019
Fakunie	Grace A.	Bank- Fund Staff F.C.U. 1750 H Street, NW, #200	20006
Fripp	SaVern	Office of the Chief Medical Examiner 1910 Massachusetts Avenue, SE, Bldg #27	20003

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Gaskins	LaTia	Office of Campaign Finance 2000 14th Street, NW Suite 420	20009
Hale	Betty	Self 18 55th Street, NE	20019
Jolimeau	Katiana	Bank Fund Staff F.C.U. 1818 H Street, NW	20433
Jones	Patricia A.	Seyfarth Shaw LLP 975 F Street, NW	20004
Joyner	Christa L.	Blue Skye Construction 1539 7th Street, NW	20001
Key	Kevin L.	Mindel Management, Incorporated 1760 Swann Street, NW	20009
Koines	Kristen E.	Arent Fox, LLP 1050 Connecticut Avenue, NW	20036
Lashley	Michael	Self 2111 4th Street, NW	20001
Lee	Alicia C.	Department Of Interior F.C.U. 1849 C Street, NW, Room B038	20240
Lye	Devinie Rukshani	Casey Trees Endowment Fund 1123 11th Street, NW	20001
McDonald	Sallie	Library of Congress Federal Credit Union 101 Independence Avenue, SE, Suite LM634	20540
Mungin	Darlene	Dept. of Public Works Parking Enforcement Management Admin. 1725 15th Street, NE	20002
Munir	Taiba	Kobre & Kim LLP 1919 M Street, NW	20036

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Payne	Christina	Arent Fox, LLP 1050 Connecticut Avenue, NW	20036
Payton	Debra	AARP 601 E Street NW, T3-219	20049
Ramos	Alexander	Wachovia Bank 3325 14th Street, NW	20010
Renner	Richard R.	Kohn Kohn & Colapinto LLP 3233 P Street, NW	20007
Robinson	Catherine B.	Studley, Incorporated 555 13th Street, NW, Suite 420 East	20004
Rodriguez	Francisco A.	AeA 601 Pennsylvania Ave., NW, #600 N Bldg	20004
Scotton	Michael A.	E. Keith Edwards Insurance Agency, Inc. 7813 Georgia Avenue, NW	20012
Spain	Teretha M.	Mt. Joy Baptist Church 514 4th Street, SE	20003
Sullivan	Evangeline	Self 1645 W Street, SE, #203	20020
Taylor	Tonona	B&D Consulting 805 15th Street, NW Suite 700	20005
Thurman	Alvin D.	Arent Fox, LLP 1050 Connecticut Avenue, NW	20036
Tyler, III	Limmie L.	Perkin Coie LLP 607 14th Street, NW, Suite 800	20004
Vlahakis	Peter M.	Debevoise & Plimpton, LLP 555 13th Street, NW	20004
White	Andre D.	Department on Disability Services 1125 15th Street, NW, 9th Floor	20005

**D.C. Office of the Secretary
Appointments of Notaries Public**

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Williams	Norman	DYRS Renaissance Program 1816 19th Street, NW	20009
Wright	Patrice	Wright Patman Congressional FCU 441 2nd Street, SW	20515
Wright	Sabrina G.	Self 3510 Commodore Joshua Barney Drive, NE, #104	20018

**WASHINGTON CONVENTION CENTER AUTHORITY (WCCA)
ADVISORY COMMITTEE**

MEETING POSTPONEMENT

Please be advised that the Washington Convention Center Authority (WCCA) Advisory Committee meeting scheduled at 5:00 pm on Thursday, January 15, 2009, has been postponed.

The next WCCA Advisory Committee meeting will be held, as follows:

5:00 pm
Thursday, February 19, 2009

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Walter E. Washington Convention Center  
Dr. Charlene Drew Jarvis Board Room  
801 Mount Vernon Place, NW  
Washington, DC 20001

For additional information, please contact Theresa DuBois, WCCA External Affairs Manager, and Liaison to the WCCA Advisory Committee, at (202) 249-3042 or via e-mail at [tdubois@dcconvention.com](mailto:tdubois@dcconvention.com).

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

**Appeal No. 17769 of Advisory Neighborhood Commission 6A**, pursuant to 11 DCMR §§ 3100 and 3101, from a decision of the Zoning Administrator granting zoning and environmental disciplines contained in building plan review status tracking number 3758 A 2006, allowing a public charter school (AppleTree Institute for Education Innovation) in the R-4 district at premises 138 12<sup>th</sup> Street, N.E. (Square 988, Lot 820).

**HEARING DATE:** June 3, 2008

**DECISION DATE:** July 1, 2008

**DECISION AND ORDER**

This appeal was submitted December 24, 2007 by Advisory Neighborhood Commission 6A, (“Appellant”), which challenged a decision by the Department of Consumer and Regulatory Affairs “to grant Zoning and Environmental Disciplines contained in the Building Plan Review Status Tracking Number 3758 A 2006,” concerning the proposed public charter school use of property located at 138 12<sup>th</sup> Street, N.E. by the AppleTree Institute for Education Innovation (“AppleTree”). Following a public hearing, the Board voted at its public meeting on July 1, 2008 to deny the appeal.

**PRELIMINARY MATTERS**

Notice of Appeal and Notice of Hearing. By memoranda dated January 4, 2008, the Office of Zoning provided notice of the appeal to the Office of Planning; the Zoning Administrator, at the Department of Consumer and Regulatory Affairs (“DCRA”); Advisory Neighborhood Commission (“ANC”) 6A, the ANC in which the subject property was located; and Single Member District/ANC 6A04. Pursuant to 11 DCMR § 3112.14, on March 12, 2008 the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Appellant, the Zoning Administrator, and AppleTree. Notice was also published in the D.C. Register on March 21, 2008 (55 DCR 2823).

Party Status. The parties in this proceeding were the Appellant, ANC 6A; DCRA; and AppleTree, the owner of the property that was the subject of the appeal. There were no additional requests for party status.

Appellant’s Case. The appeal challenged a decision made by DCRA’s Building and Land Regulation Administration to approve Zoning and Environmental Disciplines contained in the Building Plan Review Status Tracking Number 3758 A 2006, and the subsequent issuance of a

**BZA APPEAL NO. 17769****PAGE NO. 2**

Building permit to AppleTree.<sup>1</sup> ANC 6A asserted that DCRA erred in issuing the building permit to AppleTree on October 26, 2007 because the reviews of two disciplines were then incomplete, and because the dimensions of the subject property did not comply with the Zoning Regulations in effect on that date, in light of an amendment to § 401.3 adopted by the Zoning Commission in Z.C. Order No. 06-06. According to ANC 6A, the newly adopted requirements applied even in the case of a building that existed prior to 1958 because of another recent amendment to the Zoning Regulations, adopted by the Zoning Commission in Case No. 07-03. ANC 6A contended that DCRA should be required to “revoke the Zoning and Environmental Disciplines and any approved building and construction permits for Permit No. 89587,” and to “deny the pending zoning and certificate of occupancy requests based on the fact that the property under consideration does not [meet] the minimum lot dimension requirements (lot area and lot width) of Title 11 DCMR § 401.3.”

Zoning Administrator. The Department of Consumer and Regulatory Affairs argued that the appeal submitted by ANC 6A did not allege any error committed with respect to zoning, because the building permit was not issued by the Zoning Administrator. The Zoning Administrator described the process for approval of an application for a building permit, stating that an application must be reviewed and approved by approximately 20 separate disciplines (such as environmental, electrical, structural, mechanical, and historic preservation reviews) in addition to zoning before a permit is finally issued by the director of DCRA’s permit center or a designee. The Zoning Administrator, whose review is not contingent upon the completion of other disciplines, is required to certify that a project will comport with the Zoning Regulations before an application is approved.

The Zoning Administrator testified that the amendments to the Zoning Regulations cited by ANC 6A, which became effective in September 2007, did not apply to AppleTree’s application for a building permit. Pursuant to § 3202.6, the Zoning Administrator had processed AppleTree’s application in accordance with the regulations in effect on August 6, 2007, the date of an order of the Board that had authorized the permit.

Intervenor. AppleTree concurred with the Zoning Administrator that its application for a building permit was not subject to the zoning text amendments that became effective in September 2007. AppleTree asserted that its permit application had complied with applicable zoning requirements since it was filed, and noted that the Board had previously voted to grant AppleTree’s appeal of the Zoning Administrator’s initial decision to deny the application. According to AppleTree, the Zoning Administrator properly processed the permit application in accordance with the regulations in effect on the date of the Board’s order in the appeal case, which occurred before the Zoning Commission amended the regulations.

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<sup>1</sup> Originally the appeal also alleged that “DCRA has failed to adequately review or evaluate the environmental impact as required by D.C. Law 8-86 ‘District of Columbia Environmental Policy Act of 1989’ and the rules promulgated by DCRA for projects of this magnitude and scope.” The Appellant did not pursue this allegation before the Board, which has jurisdiction to consider only claims of error in the administration the Zoning Regulations.

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Request for Postponement. By letter dated May 23, 2008, ANC 6A requested a postponement of the hearing for at least 30 days to allow the Office of Administrative Hearings (“OAH”) time to issue a decision in a proceeding concerning an appeal brought by AppleTree to challenge a decision by DCRA to revoke AppleTree’s building permit (OAH Case No. CR-C-07-100087). By letter dated May 27, 2007, AppleTree opposed the request for postponement, stating that further delay would prejudice AppleTree and that nothing in the OAH proceeding could affect the outcome of ANC 6A’s appeal to the BZA. By response submitted May 29, 2005, DCRA also opposed the ANC’s request for a continuance, citing a final order issued May 29, 2008 by OAH that dismissed the proceeding for lack of subject matter jurisdiction. At the public hearing on June 3, 2008, ANC 6A withdrew its request for postponement.

**FINDINGS OF FACT**

1. The subject property is located at 138 12<sup>th</sup> Street, N.E. (Square 988, Lot 820) in the Capitol Hill neighborhood. The lot is 36 feet wide and has an area of 4,230 square feet, and is zoned R-4.
2. The subject property is improved with a commercial building that was constructed in the 1910s. The building has been used for non-residential purposes at least since the promulgation of the current version of the Zoning Regulations; on May 12, 1958, the effective date of the Zoning Regulations, the building was used as an office facility for a heating oil company.
3. The property is owned by AppleTree Institute for Education Innovation, Inc., a non-profit that focuses on pre-literacy education for three- and four-year-old children. AppleTree purchased the property in 2005 to serve as the location of a three-classroom public charter school.
4. On February 9, 2006, AppleTree applied for a building permit to construct a rear addition onto the existing building at the subject property.
5. On February 13, 2006, the Zoning Commission adopted an emergency rule pertaining to public schools (Z.C. Case No. 06-06; Notice of Emergency and Proposed Rulemaking, 53 DCR 2017). The emergency rule was re-adopted on June 12, 2006 (53 DCR 5895), and a Notice of Final Rulemaking, adopting a new permanent rule, was published December 1, 2006 (53 DCR 9580). In relevant part the new rule increased the minimum lot area for a public school (defined to include charter schools) in an R-4 zone from 4,000 square feet to 9,000 square feet, and the minimum lot width from 40 feet to 120 feet.
6. On April 28, 2006, the Zoning Administrator denied AppleTree’s permit application on the grounds that the proposed use of the subject property failed to meet the minimum lot area requirement of 9,000 square feet, the minimum lot width requirement of 120 feet, and

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minimum parking requirement of 10 spaces. AppleTree appealed the Zoning Administrator's decision to the Board.

7. By order issued July 25, 2007 in Appeal No. 17532, the Board concluded that the Zoning Administrator had erred in denying AppleTree's permit application. The Board concurred with AppleTree that the subject property was exempt from the new area restrictions by reason of § 401.1 of the Zoning Regulations, which then stated that, with certain exceptions, "in the case of a building located, on May 12, 1958, on a lot with a lot area or width of lot, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title." The Board concluded that a building that was located on May 12, 1958 on a lot that does not meet the prescribed lot area or lot width requirements may be enlarged or replaced, provided that the property complies with all other provisions of the Zoning Regulations. After concluding that the subject property complied with all other provisions of the Zoning Regulations, the Board reversed the determination of the Zoning Administrator that the building on the subject property could not be expanded because the lot did not meet the area and width requirements for a public school.
8. In accordance with § 3125.6, the Board's order in Appeal No. 17532 became final on July 25, 2007, upon the filing of the order in the record and its service upon the parties. Pursuant to §§ 3125.9 and 3110, the order became effective on August 6, 2007.
9. By order effective September 14, 2007 in Case No. 07-03, the Zoning Commission amended § 401.1 to state as follows:

Except as provided in chapters 20 through 25 of this title and in the second sentence of this subsection, in the case of a building located, on May 12, 1958, on a lot with a lot area or width of lot, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title. Notwithstanding the above, the lot area requirements of § 401.3 must be met when the building is being converted to a use or replaced by a building intended to house a use that would require more lot area or lot width than is on the building's lot.

(Order No. 07-03 (54 DCR 8971).)

10. By order in Case No. 06-33, also effective September 14, 2007, the Zoning Commission adopted text amendments to chapter 21 of the Zoning Regulations to clarify the parking requirements applicable to buildings deemed "historic resources." (See Order No. 06-33 (54 DCR 8959).) The application of the new rules to the subject property would not have resulted in an increased parking requirement.

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11. The zoning approval of AppleTree's permit application was initially made on August 9, 2007 and was affirmed on August 23, 2007, when the Zoning Administrator determined that the application had been approved correctly with regard to zoning. On September 18, 2007, before the permit was issued, the Zoning Administrator placed a hold on the application so that it could be reviewed again in light of the two orders of the Zoning Commission that became effective on September 14, 2007 (that is, Order No. 06-33 and Order No. 07-03).
12. Building Permit No. 89587 was issued to AppleTree on October 26, 2007, allowing interior renovation of the existing building and construction of a three-story addition with basement. The permit was mistakenly issued in spite of the hold that had been placed on the application by the Zoning Administrator.
13. On November 15, 2007, DCRA issued a Notice of Revocation of Building Permit No. 89587, stating that the permit had been issued "in error, prior to completion of reviews by all of the disciplines required to approve the application, specifically environmental and zoning." The notice of revocation stated the necessary zoning review included "the impact of an amendment of the Zoning Regulations pursuant to Zoning Commission Order 06-33, published in the District of Columbia Register on September 14, 2007."
14. ANC 6A submitted its appeal to the Board on December 24, 2007. The ANC asserted that the permit issued by DCRA on October 26, 2007 did not comply with the Zoning Regulations, specifically the lot dimension requirements, in effect on that date, in violation of 11 DCMR § 3202.4. According to ANC 6A, the amendment to § 401.3 adopted by the Zoning Commission in Case No. 06-06 "stipulates that a property to be used as a 'public school' have a minimum lot size of 9,000 sq. ft. and a minimum lot width of 120 ft." while the amendment adopted by the Zoning Commission in Case No. 07-03 "stipulates that, even though the lot and building existed prior to 1958, it must meet the minimum lot area and minimum lot width requirements of § 401.3 if the building is being converted to a use that requires more lot area and lot width than is on the building's lot." ANC 6A asserted that the Board's order in Appeal No. 17532 did not authorize the issuance of a building permits as of the effective date of that order because AppleTree's application was not sufficiently complete, as required by § 3202.6 of the Zoning Regulations.
15. In reviewing AppleTree's application for a building permit, the Zoning Administrator determined that § 3202.6 was applicable.<sup>2</sup> According to the Zoning Administrator, the general rule set forth in § 3202.4 – that any construction authorized by a permit may be carried to completion pursuant to the provision of title 11 in effect on the date that the permit is issued – is subject to an exception set forth in § 3202.6, such that any application

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<sup>2</sup> Pursuant to § 3202.6, "All applications for building permits authorized by orders of the Board of Zoning Adjustment may be processed in accordance with the Zoning Regulations in effect on the date those orders are promulgated; provided, that all applications for building permits shall be accompanied by the plans and other information required by § 3202.2, which shall be sufficiently complete to permit processing without substantial change or deviation."

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for a building permit that is authorized by the Board may be processed in accordance with the zoning regulations in effect on the date that the Board's order is promulgated. The Zoning Administrator determined that AppleTree's application had been authorized by the Board's order in Appeal No. 17532, which became effective on August 6, 2007, and concluded that the zoning regulations in effect on that date were controlling for purposes of the application, and that any subsequent amendments to the regulations did not apply to the application. In March 2008, the Zoning Administrator ultimately concluded that AppleTree's application complied with the Zoning Regulations in effect on August 6, 2007.

16. By letter to AppleTree dated April 28, 2008, DCRA indicated that the necessary environmental and zoning approvals had been obtained, and therefore withdrew the Notice of Revocation and confirmed the validity of Building Permit No. 89587 *nunc pro tunc*.

**CONCLUSIONS OF LAW**

The Board is authorized by the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001), to hear and decide appeals where it is alleged by the appellant that there is error in any decision made by any administrative officer in the administration the Zoning Regulations. In an appeal, the Board may reverse or affirm, in whole or in part, or modify the decision appealed from. *Id.*

An appeal must be filed within 60 days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier. 11 DCMR § 3112.2(a). The Board may extend the 60-day deadline in case of exceptional circumstances outside the appellant's control. 11 DCMR § 3112.2(d). In this case, the Appellant filed an appeal on December 24, 2007 that challenged a building permit issued October 26, 2007; the appeal was filed within the 60-day deadline and therefore was timely.<sup>3</sup>

Based on the findings of fact, the Board was not persuaded by the Appellant that an error occurred in any decision made in the administration of the Zoning Regulations with respect to the approval of AppleTree's application for a building permit and the issuance of Building Permit No. 89587. The ANC initially argued that the permit should not have been issued prior to completion of reviews by the environmental and zoning disciplines. As noted earlier, the Zoning Regulations do not require environmental compliance as a prerequisite to the issuance of a building permit. Only compliance with the zoning regulations must be found. 11 DCMR § 3202.1. The Board also notes that DCRA concurred that the permit had been issued in error, but the errors were cured and DCRA ultimately withdrew its notice of revocation and confirmed the validity of the permit once the necessary environmental and zoning approvals were obtained. With regard to this contention, the Board concludes that ANC 6A did not state a claim of zoning error.

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<sup>3</sup> The record contains conflicting information as to whether the permit was issued October 26, 2007 or October 29, 2007. The Board concludes that ANC 6A's appeal of the permit was timely filed in either event.

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ANC 6A also challenged the Zoning Administrator's determination that AppleTree's permit application was authorized by the Board's order in Appeal No. 17532 and was not subject to zoning amendments that went into effect subsequently. Pursuant to § 3202.6, all applications for building permits "authorized by orders of the Board of Zoning Adjustment may be processed in accordance with the Zoning Regulations in effect on the date those orders are promulgated...". This section applies so long as an application is "accompanied by the plans and other information required by § 3202.2, which shall be sufficiently complete to permit processing without substantial change or deviation."

The ANC's contention that AppleTree's application was not sufficiently complete, as required by § 3202.6, apparently refers to the mistaken issuance of the permit prior to completion of all the necessary reviews; that is, the ANC seems to assert that the application could not be processed – and thus the permit could not be issued – until complete information, including that gleaned from the reviews of all the various disciplines, was available. The Board was not persuaded by this argument. As previously noted, the permit was mistakenly issued prior to completion of all necessary reviews, but those reviews occurred subsequently and the defect was cured *nunc pro tunc* to the original date of issuance. Moreover, § 3202.6, specifically refers to plans and other information required by § 3202.2, which shall be sufficiently complete to permit processing. The ANC did not show that AppleTree had not complied with § 3202.2, which requires each applicant for a building permit to supply the specific information necessary to "determine compliance with the provisions of" the Zoning Regulations. Thus, the Board does not agree with ANC 6A that AppleTree's application was not sufficiently complete to allow issuance of a building permit.

The Board concludes that the Zoning Administrator properly processed AppleTree's application for a building permit in accordance with the Zoning Regulations in effect on August 6, 2007, the effective date of the order of the Board that authorized the permit by granting AppleTree's appeal of the Zoning Administrator's initial decision to deny the application. As already noted, the Board finds that AppleTree's application was accompanied by the plans and information required by § 3202.2, and was sufficiently complete to permit processing without substantial change or deviation. The amendments to the Zoning Regulations cited by ANC 6A did not become effective until September 14, 2007, and thus do not apply to AppleTree's application.

The Zoning Administrator noted that § 3202.6 allows some discretion in deciding whether to apply any recent zoning amendments, in that an application for a building permit authorized by an order of the Board *may* be processed in accordance with the Zoning Regulations in effect on the date the order is promulgated. In this case, the Board concurs with the Zoning Administrator's decision to apply the regulations in effect on the date of the Board's order, particularly since the Board indicated its interpretation of the relevant zoning provisions in its decision on AppleTree's appeal and the Zoning Administrator then carried out that interpretation in processing the permit application.

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For the reasons stated above, the Board concludes that the Appellant has not satisfied the burden of proof with respect to its claim of error in the decision by the Department of Consumer and Regulatory Affairs to approve a building permit application for the proposed public charter school use of property located in the R-4 zone at 138 12<sup>th</sup> Street, N.E. by the AppleTree Institute for Education Innovation. Accordingly, it is therefore **ORDERED** that the appeal is **DENIED**.

**VOTE: 4-0-1** (Ruthanne G. Miller, Mary Oates Walker, Shane L. Dettman, and Curtis L. Etherly, Jr. (by absentee vote) voting to deny the appeal; Marc D. Loud not present, not voting)

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

Each concurring Board member approved the issuance of this order.

**FINAL DATE OF ORDER: DECEMBER 18, 2008**

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

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

**Application No. 17853 of Carol McCabe Booker**, pursuant to 11 DCMR § 3103.2, for a variance from the nonconforming structure provisions under subsection 2001.3 (not meeting the lot occupancy requirements under section 403) to allow a second level addition to an existing one-family dwelling in the CAP/R-4 District at premises 155 North Carolina Avenue, S.E. (Square 735, Lot 57).

**HEARING DATE:** December 9, 2008

**DECISION DATE:** December 9, 2008 (Bench Decision)

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 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 (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 § 3103.2, from the variance requirements of section 403 and subsection 2001.3. 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 proving under 11 DCMR §§ 3103.2, 403 and 2001.3, 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.

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

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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, Michael G. Turnbull 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 10, 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

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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.

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

**Application No. 17857 of ACG Partners LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to permit an office use under subsection 320.3, in the R-3 District at premises 1918 13<sup>th</sup> Street, S.E. (Square 5768, Lot 807).

**HEARING DATE:** December 16, 2008

**DECISION DATE:** December 16, 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) 8A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8A which is automatically a party to this application. ANC 8A did not participate in the application. The Office of Planning (OP) submitted a report in support of the application. Ward 8 Councilmember Marion Barry filed submitted a letter 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 § 3103.2, from the variance requirements of section 320.3. 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 report, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 320.3, 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.

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**.

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**VOTE:**       **4-0-1** (Ruthanne G. Miller, Marc D. Loud, Mary Oates Walker and Shane L. Dettman to Approve. The Zoning Commission member not voting, not having participated in the case.)

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** December 17, 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.

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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.

**ZONING COMMISSION ORDER NO. 05-24B**  
**Z.C. CASE NO. 05-24B**  
**(Modification to Approved Planned Unit Development for**  
**Eastgate Family Housing)**  
**December 8, 2008**

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia (the "Commission") was held on June 2, 2008. At the meeting, the Commission approved an application from the District of Columbia Housing Authority and the associated private development team of A&R/THC II LLC (the "Applicant") for a modification to an approved Planned Unit Development ("PUD") for property bounded by Fitch, 51<sup>st</sup>, and F Streets, Benning Road, and Queen's Stroll Place (Drake Place), S.E. The property is identified as Lots 9-20 in Square 5318, Lots 20-36 in Square 5319, and Lots 29-36 in Square 5320. The Commission considered the application pursuant to Chapters 24 and 30 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

1. **The Application, Parties, and Hearing**

By Z.C. Order No. 05-24, dated April 20, 2006, the Commission approved a PUD for multiple properties in Squares 5318, 5319, and 5320. The PUD site is a rolling hillside of approximately 698,382 square feet of land area, or 16.03 acres located in the Marshall Heights neighborhood. The Order approved the construction of a large community redevelopment project that comprises a total of 186 new residences including: 20 detached houses; 158 row dwellings; and two grand houses (each having four units). The redevelopment plan also provided for closing and realigning several existing streets and alleys and creating new streets and alleys. The overall goal of the project is to create a stable mixed-income residential community with an emphasis on affordable housing. Forty-three percent of the units will be in the low-income range, 23% will be in the moderate-income range, and 34% will be at market rate. The PUD site is zoned R-5-A. No map amendment was associated with the PUD.

2. Pursuant to Z.C. Order No. 05-24A, the Commission approved a minor modification eliminating 35 garages and driveways and associated curb cuts along Queen's Stroll Place, S.E. and F Street, S.E. that the D.C. Department of Transportation ("DDOT") deemed too close together in accordance with DDOT standards. The Commission reduced the overall parking requirements for the PUD to a minimum of 277 onsite parking spaces in the PUD.

3. On February 15, 2008, the Applicant filed the instant application for a second minor modification to Z.C. Order No. 05-24 and requested that the application be placed on the Commission's consent calendar. The application stated that the requested modifications

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- to Z. C. Order No. 05-24 are necessitated by current market conditions, specifically a depressed housing market as well as a crisis in the credit market rendering the higher priced detached houses in the project unmarketable. The Applicant proposes to modify the previously approved PUD by substituting 45 townhouses for the approved 20 detached houses.
4. On March 24, 2008, the Commission determined that the proposed modification was not minor in nature, and instead voted 5-0-0 to set the application down for a public hearing. The Commission also waived the requirement of a prehearing statement.
  5. After proper notice, the Commission held a public hearing on June 2, 2008. The parties to the case were the Applicant and Advisory Neighborhood commission (“ANC”) 7E, the ANC within which the PUD is located.
  6. At the public hearing, the Applicant presented expert testimony indicating that, as a result of current market conditions including a depressed housing market and tight credit, the previously approved 20 detached houses included in the PUD are unmarketable and, as such, jeopardize the overall economics and feasibility of the PUD project. Further, the proposed 45 townhouses to be substituted for the 20 detached houses render the project feasible and enable the Applicant to provide 100% of the townhouses as affordable units.
  7. The Applicant’s expert traffic consultant testified that as a result of recent input from DDOT, the site plan for the proposed 45 townhouse units would be revised to eliminate garages and driveways for approximately eight of the townhouses. The Applicant therefore requested flexibility to modify the PUD to eliminate off-street parking for approximately eight of the proposed townhouse units to meet DDOT requirements.
  8. There was no opposition to this modification request. ANC 7E submitted a letter dated May 31, 2008 in support of the requested modification indicating that on May 31, 2008, with a quorum present, the ANC voted 5-1 to support the modification. A representative of the ANC also testified in support of the modification of the public hearing.
  9. The Office of Planning (“OP”) submitted a report dated May 21, 2008 that recommended approval of the modification, finding that the proposed townhouse units would be compatible with the overall development, provide additional affordable units, and retain all the public amenities proposed in the original PUD. OP further advised that the modifications would continue to meet the intent of the Comprehensive Plan and the elements of the approved PUD. OP’s recommendation of approval was contingent on the Applicant resolving any issues regarding driveway placement with DDOT. As indicated in ¶ 7, the Applicant met with DDOT and resolved DDOT’s issues.

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10. At the close of the public hearing, the Commission voted 4-0-1 to approve the modification. The Commission concurs with OP and the Applicant that the proposed townhouses are compatible with the overall development and that the flexibility requested to eliminate off-street parking for approximately eight of the proposed townhouses is justified and would not adversely impact the ability of the PUD to meet the zoning standard of one space per unit for the PUD as a whole. Further, the proposed modification enables the Applicant to obtain the necessary financing to complete the PUD project.
11. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated May 30, 2008, found that the proposed PUD would not have an adverse effect on federal interests nor be inconsistent with the Comprehensive Plan for the National Capital.

### CONCLUSIONS OF LAW

1. Under the PUD process of the Zoning Regulations, the commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
2. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
3. Approval of this modification to the PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
4. The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to the affected ANC's written recommendation. The Commission has carefully considered ANC 7E's recommendation for approval and concurs in its recommendation.
5. 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

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give great weight to OP's recommendation (as reflected in ¶ 9). The Commission has carefully considered OP's recommendation for approval and concurs in its recommendation.

5. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia orders **APPROVAL** of the modification to develop 45 townhouses in lieu of the 20 detached houses previously approved in the PUD. This approval is subject to the following guidelines, conditions, and standards:

1. The Applicant shall comply with the conditions set forth in Z.C. Order No. 05-24 and Z.C. Order No. 05-24A as modified herein.
2. The new townhouses that are substituted for the 20 detached homes in the previously approved PUD shall be developed in accordance with the Applicants supplemental filing submitted May 15, 2008 (Exhibit 14).
3. Condition 7 of Z.C. Order 05-24, is modified by adding a new Condition 7(e) to read as follows:
  - (e) Delete approximately eight (8) garages and driveways for the 45 townhouses to meet DDOT requirements and modify the fenestration of the aforementioned garages for adaptation to living spaces.
4. The PUD approved by the Commission, as modified herein, shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three (3) years of the effective date of this Order.
5. 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

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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 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.

On June 2, 2008, the Commission **APPROVED** the application by a vote of 4-0-1 (Anthony J. Hood, Curtis L. Etherly, Michael G. Turnbull, and Peter G. May to approve; Gregory N. Jeffries, not present, not voting).

The Order was **ADOPTED** by the Zoning Commission on December 8, 2008, by a vote of 3-0-2 (Anthony J. Hood, Peter G. May, Michael G. Turnbull to adopt, Gregory N. Jeffries, not having participated, not voting; the third Mayoral appointee position vacant, not voting).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the D.C. Register; that is, on \_\_\_\_\_.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 05-38A**

**Z.C. Case No. 05-38A**

**Modification to a Consolidated Planned Unit Development**

**(Marina View Trustee, LLC)**

**December 8, 2008**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on September 29, 2008, to consider an application from Marina View Trustee, LLC ("Applicant") seeking approval of a modification request of an approved planned unit development ("PUD") and related Zoning Map Amendment for Lots 50 and 853 in Square 499 (the "Property"). The original PUD Order was approved in Z.C. Case No. 05-38 (which became effective on October 26, 2007). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

At its public meeting on October 20, 2008, the Commission took proposed action by a vote of 3-0-2 to approve the modification application.

The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. The NCPC Executive Director, through a Delegated Action dated November 6, 2008, found that the proposed modification of the PUD would not be inconsistent with the Comprehensive Plan nor would it have any adverse impact on any federal interest.

The Commission took final action to approve the application on December 8, 2008, by a vote of 3-0-2.

**FINDINGS OF FACT**

**PROCEDURAL HISTORY**

1. By Z.C. Order No. 05-38, which became final and effective on October 26, 2007 through its publication in the *D.C. Register* (the "Order"), the Commission approved a PUD for the Property. The Applicant recorded the PUD covenant in the land records on March 18, 2008. Two existing structures, designed by I.M. Pei, occupy the Property (the "Pei Towers"). Surface parking lots occupy the northern and southern ends of the Property. The Order approved the construction of two new residential buildings to be constructed on the existing surface parking lots, with ground floor retail uses in the new south building along M Street. A mixture of rental and for-sale units were anticipated in the PUD. The Order also approved a large green space in the center of the Property (the "Great Lawn") and two new "vest pocket" parks located between the Pei Towers and the new residential buildings. On the east end of the Great Lawn, an amenities building ("Amenities Building") with fitness facilities, recreation space, and a large swimming pool with lap lanes was approved. Financial contributions to Jefferson Middle School, Amidon Elementary School, and Bowen Elementary School were part of the original

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- community amenities package. The Property was rezoned from R-5-D to C-3-C in conjunction with the PUD. (Exhibit 3.)
2. On June 5, 2008, the Applicant filed a request for a modification of the PUD with the Commission, pursuant to its consent calendar provisions. The Applicant requested modifications to the project, which included: (i) refinements of some of the façade and roof structures of the various buildings; (ii) removal of the for-sale residential component; (iii) relocation of a pool from inside the Amenities Building to outside, adjacent to the Great Lawn; (iv) an increase in the maximum number of units in the project to 580 (an increase of less than 2%); and (v) modifications to the community amenities package. On June 24, 2008, the Applicant filed a supplemental submission with the Commission that included a chart outlining the conditions of the Order that will be modified with the approval of the modification application. (Exhibits 1, 7.)
  3. At the Commission's July 14, 2008 public meeting, the Commission removed the minor modification request from its consent calendar, and instead set it down for a public hearing. The Commission noted that the hearing would be limited to evaluating only the proposed modifications. (Transcript of Z.C. Public Meeting, July 14, 2008, pp. 141, 142.) The public hearing was subsequently scheduled for September 29, 2008.
  4. Tiber Island Cooperative Homes, Inc. ("Tiber Island") and Paul Greenberg submitted a request for party status dated September 12, 2008. The letter stated that Mr. Greenberg is a cooperative owner of Tiber Island, and that the PUD is located within 200 feet of Tiber Island. In the September 12, 2008 submission, Tiber Island and Paul Greenberg also requested that the Commission dismiss or deny the modification request since an appeal of Z.C. Order No. 05-38 is pending with the D.C. Court of Appeals. (Exhibit 15.)
  5. On September 22, 2008, the Applicant filed its opposition to the request for party status of Tiber Island and Paul Greenberg. The Applicant noted that the requests of Tiber Island and Paul Greenberg failed to provide any factual basis for how they are uniquely affected by the proposed modifications, other than they are located within 200 feet of the PUD site. In its September 22, 2008, submission to the Commission, the Applicant also filed its opposition to the assertion that the public hearing on the modifications application must be dismissed or denied while an appeal of the Order is pending with the D.C. Court of Appeals. The Applicant noted that Tiber Island's assertion that the Order is not final is clearly incorrect as evidenced by the clear and unambiguous language of the Zoning Regulations and the District of Columbia's Administrative Procedures Act ("APA"). (Exhibit 17.)
  6. At the September 29, 2008 public hearing, the Commission denied the request for party status of Tiber Island and Paul Greenberg based on the failure to provide evidence of the satisfaction of 11 DCMR § 3022.3, particularly 11 DCMR § 3022.3(f)(5). In addition, the Commission denied the request to dismiss or deny the modification request for reasons explained in the conclusions of law below. Therefore, the Commission

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proceeded with the public hearing. (Transcript of Z.C. Public Hearing, September 29, 2008, pp. 9, 11.)

7. At the close of the September 29, 2008 public hearing, the Commission requested additional information regarding the Applicant's benefits and amenities package, specifically whether the Applicant would consider increasing its monetary proffer to renovate the Town Center West Park and more information on the former proffer to provide a discount to residents interested in buying a condominium in the project. (Transcript of Z.C. Public Hearing, September 29, 2008, pp. 56-59.)
8. The Applicant filed its post-hearing submission on October 14, 2008, sufficiently addressing each of the issues raised by the Commission. Specifically, the Applicant agreed to reserve an additional \$71,500 in contingency funds to guarantee the renovation of the Town Center West Park. The Applicant will use the additional funds to complete the proposed work in the event the \$178,500 reserved for renovating the Town Center West Park is not sufficient, increasing the contribution potentially to a total of \$250,000. The Applicant capped the contribution for the renovation of the Town Center West Park at \$250,000. (Exhibit 24.)

#### PUD MODIFICATION APPLICATION

9. The proposed modifications to the façades and roof structures of the existing and proposed buildings, and the relocation of the pool from inside the Amenities Building are the result of further study of the mechanical systems in the existing Pei Buildings, refinements of the façade treatments for all of the buildings, and additional thought regarding the proposed use of the Amenities Building.
  - The modification application proposed a new façade treatment for the east elevations of the new south and north residential towers and the east and west elevations of the Amenities Building. The east elevation façades of these buildings face the new service road/alley separating the project from the Waterside Mall development. On the new south and north residential towers, the Applicant is reducing the number of balconies (replacing with bay windows) and extending glass bays, distinguishing the east façade from the other elevations. All of the residential units on the east side of these buildings will still have a balcony facing either K Street, M Street, or the courtyards shared with the Pei Buildings. The Applicant will continue to use the same quality materials on the east façade as it is using on the other elevations of the buildings.
  - The elevation on the east side of the Amenities Building has been refined to include more brick and less glass area. The west elevation of the Amenities Building has been adjusted to reflect the revised interior layout of the building

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(including the removal of the pool), but remains true to the intent of the approved PUD design.

- The Applicant is retaining the existing layout of units in the South Pei Building by eliminating the additional elevator which was originally approved. The Applicant has eliminated recreation space on the rooftops of the Pei Buildings, due to the restriction on access to the roof and has increased the area of the green roof. The project continues to feature an abundance of outdoor recreation space. Based on further study of the necessary mechanical structures for the new north and south residential towers, the Applicant has made minor adjustments to the roof structures on the new buildings creating a more refined treatment of the roof structures, recreational spaces, and the green roof areas.
  - The Applicant is moving the pool from inside the Amenities Building to the outside of the Amenities Building, adjacent to the Great Lawn. Based on feedback from residents of Marina View Towers and experience with other projects, the Applicant believes that an outdoor pool better complements the social aspect of the Great Lawn and is more beneficial to the tenants during the summer than an indoor pool. The District of Columbia State Historic Preservation Officer has indicated that he has no objection to this proposed modification.
  - Based on further study of the lobbies of the Pei Buildings, the Applicant has decided to maintain the lobby plan configuration similar to that which was originally designed. The Applicant will install 10' X 10' glass panels on the ground floor of the Pei Buildings to more closely follow Mr. Pei's original design. The District of Columbia State Historic Preservation Officer has indicated that he has no objection to this proposed modification.
  - The maximum number of units provided in the project will increase to 580, which is within the Zoning Administrator's authority to approve pursuant to 11 DCMR § 2409.6(b). However, the Applicant is requesting that the Commission approve up to 580 residential units for this project. The Applicant is not requesting an increase in the number of parking spaces originally approved (556 residential spaces, eight retail spaces, and five spaces for a car-sharing service). The Applicant will continue to make one bike parking space available for each residential unit. (Exhibit 1.)
10. The approved PUD contemplated a for-sale condominium component to the project. The Applicant noted that given the current state of the residential condominium market in the District of Columbia, the Applicant does not believe a condominium project is financially viable at this time. The modification application requests permission from the Commission to replace the for-sale component of the project with rental units at this time,

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while still reserving the possibility of selling condominium units in the future, as a condominium regime has been established for this project. During the initial PUD application, the Applicant engaged in an extensive dialogue process with the Marina View Towers tenants in order to provide those tenants with a variety of residential options. The Applicant addressed the needs of the tenants by providing three programs: (i) a condominium discount purchase program; (ii) a rental discount program; or (iii) a financial compensation program. As a result of the removal of the for-sale component of the project, the Applicant is not able to provide the condominium discount purchase program. Representatives of the Applicant have addressed the issue of the removal of the condominium discount program with the Marina View Towers Tenants Association and the Tenants Association is supportive of the proposed minor modification application. There were ultimately 19 Marina View Towers tenants that chose to participate in the condominium discount purchase program. All of those tenants agreed to participate in the rental discount program or the financial compensation program. (Exhibit 1.)

11. The condominium discount purchase program was initially valued at \$3,240,000, based on a condominium sales price of \$425/per square foot offered to the Marina View Towers residents. However, the Applicant noted that this valuation was based on an estimated market rate condominium value of \$525/square foot. At the time of the public hearing, the estimated market rate condominium value was only approximately \$450/square foot. Using the same factors as the original calculation of the value of the condominium discount purchase program with the new discount of \$25 per square foot, results in a total value of only \$810,000 (648 s.f (average unit size) X \$25 (discount price per s.f.) X 50 (estimated number of participants in the program) compared to \$3,240,000. If the calculation is based on the actual number of Marina View Towers residents that opted to enter into that program, the value is only \$307,800 (648 X \$25 X 19). (Exhibit 1.)
12. The Applicant proposed the following new community amenities as part of the modification application:

- Town Center West Park. The original PUD approval required that the Applicant engage the original designers of the Town Center West Park, Wallace Roberts & Todd (“WRT”), to assess the current condition of the park and recommend steps to utilize the park as a true community amenity. WRT prepared the required study and it was submitted to the Commission on January 7, 2008.

In consideration of the approval of the modification application, the Applicant will pay for and undertake the renovations for the Town Center West Park outlined in the WRT study, up to a value of \$250,000 (\$178,500 for the proposed work with contingency funds of up to \$71,500). This work will be completed prior to the issuance of a certificate of occupancy for the new South Tower.

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- Shuttle-Bug Proposal. The Applicant will make a financial contribution of \$50,000 to the Deputy Mayor for Planning and Economic Development's ("DMPED") Shuttle-Bug proposal. The purpose of the Shuttle-Bug is to provide a safe and effective transportation system around the "SuperBlock" (which is bound by 4<sup>th</sup>, M, K, and 6<sup>th</sup> Streets, S.W.) while construction activity occurs on the Marina View, Waterfront Associates, and Town Center East properties.
- Reallocation of Financial Contributions Due to Closure of Bowen Elementary School. Based on discussions with the ANC 6D Commissioners, the Applicant agreed to reallocate the \$17,000 financial contribution that was originally intended for Bowen Elementary School, as that School closed on June 30, 2008. Jefferson Middle School will receive \$22,000 for enhancement of the school's computer and technological development capabilities, Amidon Elementary School will receive \$22,000 for renovation of its library, and the Friends of the Southwest Library will receive \$22,000 for expansion of the resource collection. The contributions to Jefferson Middle School and Amidon Elementary School will be made to the Student Funds of each school. (Exhibits 1, 24.)

### GOVERNMENT REPORTS

13. In its September 19, 2008 report, the Office of Planning ("OP") noted that it was not opposed to the changes to the design of the buildings or landscape and recommended their approval. In regard to the amenity items, OP noted that "a determination by the Commission of an appropriate valuation for the original package, which the Commission used to weigh its decision for approval of the PUD, is needed to determine the adequacy of replacement items. If the Commission accepts the Applicant's determination of the valuation of the original amenity package as outlined in its modification request, then the proposed modifications to the package appear to represent a generally acceptable replacement package, . . ." (Exhibit 16.)

### ADVISORY NEIGHBORHOOD COMMISSION REPORT

14. On June 9, 2008, Advisory Neighborhood Commission ("ANC") 6D voted 5-1-1 to support the modification application. The ANC noted that:

The changes proposed by the Applicant follow the high standards of their earlier plans. The ANC feels that the changes in the building's façades and roofs, the moving of the pool to the outside, and the changes in the lobbies of the Pei buildings will not significantly change the project's design. We understand the market conditions that have lead the Applicant to eliminate, for now, the "for sale" units in the project, but believe that the arrangement worked out with the current tenants is satisfactory.

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We also believe that modifications made to the community benefits agreement that is a part of the PUD will enhance the project's relevance for the Southwest community. The restoration of the charming West Town Center Park will be a tremendous asset, and our local schools and the Friends of the Southwest Library will benefit more substantially from the Applicant's contributions. We are particularly pleased that the Applicant has offered a contribution toward the establishment of the Shuttle Bug, a proposed bus that will transport local residents around the major construction now taking place north of M Street. (Exhibit 20.)

#### PERSONS IN OPPOSITION

15. Michael McGovern provided letters from Tiber Island and Paul Greenberg evidencing his authority to represent them before the Commission at the public hearing. (Exhibits 21, 22.) At the public hearing, Mr. McGovern testified that Tiber Island and Paul Greenberg should have been awarded party status in this case because they were property owners within 200 feet of the Property and because they had been awarded party status in a similar case. In addition, Mr. McGovern testified that the Commission should not approve this modification application while the appeal of the Order is still pending before the D.C. Court of Appeals. (Transcript of Z.C. Public Hearing, September 29, 2008, pp. 44-51.)

#### CONCLUSIONS OF LAW

1. Requests for Party Status

The Commission does not find the fact that Tiber Island and Mr. Greenberg live within 200 feet of the Property alone is sufficient to satisfy the requirements for party status. Tiber Island and Mr. Greenberg failed to provide any further information as to how their interests would likely be more significantly, distinctively, or uniquely affected in character or kind than those of other persons in the general public. Therefore, the Commission concludes that Tiber Island and Paul Greenberg failed to satisfy the requirements for party status enumerated in 11 DCMR § 3022.3(f)(5). The Commission notes that this decision is consistent with its decision to deny Tiber Island and Mr. Greenberg party status in Z.C. Case No. 05-38 that the Applicant seeks to modify through this case.

2. Motion to Dismiss

Tiber Island and Mr. Greenberg, through their September 12, 2008 letter also stated their belief that the Commission could not consider the modification request until after the Court of Appeals had ruled on their appeal of Z.C. Order No. 05-38. Although this statement was not presented as a motion to the Commission, and the Commission would not consider a motion unless it was made by a party, the Commission nonetheless states

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its position on the issue as if it were a properly presented motion to dismiss the modification application.

The Zoning Regulations clearly enumerate when a written order becomes effective and final in § 3028.9, which states:

[a] written order setting forth a final action shall become final and effective upon publication in the *DC Register*, unless the Commission specifies a later effective date. An amendment to the Zoning Map approved in connection with an application for a planned unit development shall, however, become effective only upon completion of the process required by Chapter 24 of this title, and upon filing with the District of Columbia a covenant ensuring compliance with the approved plans.

Both of the prerequisites to establishing that Z.C. Order No. 05-38 is final and effective have been met. The Order was published in the *D.C. Register* on October 26, 2007 at 54 *DCR* 10419. The PUD covenant was recorded in the land records on March 18, 2008. The Order is, therefore, final and effective. The filing of a petition for review of Z.C. Order 05-38 did not change the status of the Order.

Section 11(a) of the District of Columbia Administrative Procedures Act, effective October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510(a)) is clear that the “[f]iling of a petition for review shall not in itself stay enforcement of the order or decision of the Mayor or agency, as the case may be.” The District of Columbia Court of Appeals stated “[t]he plain language of D.C. Code Section 1-1510(a)<sup>1</sup> could not be clearer. It states, without any ambiguity, that the filing of a petition for review in this court ‘shall not’ operate to stay the effect of an agency’s order.” *French v. D.C. Board of Zoning Adjustment*, 658 A.2d. 1023, 1030-1031 (D.C. 1995).

Tiber Island has not filed with the Court a motion to stay the effectiveness of Z.C. Order No. 05-38. More importantly, the Court has not granted such a stay. Accordingly, Z.C. Order No. 05-38 is final and effective and there is no impediment to the Zoning Commission making a decision on the modification application.

### 3. The Merits

Upon consideration of the record, the Commission concludes that the proposed modification is consistent with the intent of the previously approved PUD in Z.C. Order No. 05-38. Further, the Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purposes of the Zoning Regulations. The Commission concludes that the Applicant is not receiving a great financial windfall by removing the condominium discount purchase program. The

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<sup>1</sup> This section was later re-codified as D.C. Official Code § 2-510(a).

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additional financial contributions for the Shuttle-Bug, the renovation and rehabilitation of the Town Center West Park, and the retention of the condominium discount purchase program for the 19 persons that signed up for the original program are significant amenities for the PUD that counter-balance the elimination of the discount program.

Approval of the modification is not inconsistent with the Comprehensive Plan. The modified PUD will continue to create new residential units, including workforce affordable housing, retain existing residents, and provide retail opportunities in place of existing surface parking lots. In accordance with D.C. Official Code §1-309.10(d), the Commission must give great weight to the issues and concerns of the affected ANC. ANC 6D voted to support the modification application.

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 (as reflected in ¶ 13 above). OP recommended approval of the modification request and the Commission concurs in its recommendation.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for modification of the approved PUD. Condition Nos. 1, 2, 4, 5, 6, and 13 of Z.C. Order No. 05-38 are revised to read as follows (all other conditions remain in effect):

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 2, 20, 21, 26, 32, 53, 54, 55, 56, and 69 of the record in Z.C. Case No. 05-38 and Exhibit 1 in Z.C. Case No. 05-38A, as modified by the guidelines, conditions and standards of this order.
2. The Applicant will make the following financial contributions, prior to the issuance of a building permit for the new south building on the Property:
  - Jefferson Middle School: The Applicant will make a financial contribution of \$22,000 to Jefferson Junior High School to be used for enhancement of the school's computer and technological development capabilities.
  - Amidon Elementary School: The Applicant will make a financial contribution of \$22,000 to Amidon Elementary School for renovation of its library.
  - Friends of the Southwest Library: The Applicant will make a financial contribution of \$22,000 to the Friends of the Southwest Library to be used to expand their resource collection.
  - Study of the Potential Renovation of the Town Center West Park: The Applicant will engage the original designers of this park (Wallace Roberts Todd) to assess the current condition of the park and recommend steps to utilize the park as a true

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community amenity at a cost of \$15,000. The Applicant will pay for and undertake the renovations for the Town Center West Park outlined in the WRT study, up to a value of \$250,000 (\$178,500 for the proposed work with contingency funds of up to \$71,500). This work will be completed prior to the issuance of a certificate of occupancy for the new south residential tower.

- Shuttle-Bug Proposal: The Applicant will make a financial contribution of \$50,000 to the DMPED Shuttle-Bug proposal as described in paragraph 12 in the Findings of Fact.
4. If condominiums are ultimately sold in the project, the 19 tenants that chose to participate in the condominium discount purchase program will have an opportunity to return to Marina View within three years of the date of the first sale of a condominium unit and purchase a condominium unit at a 20% discount.
  5. Prior to the issuance of a certificate of occupancy for the new south residential tower, the Applicant will establish a program providing existing Marina View Towers tenants the opportunity to rent a newly renovated apartment in the project at no additional cost. The monthly rental rate for the tenant will increase only in connection with the annual consumer price index increases, provided the tenant chooses to stay in a similarly sized unit.
  6. Prior to the issuance of a certificate of occupancy for the new south residential tower, the Applicant shall establish a transportation demand management program that will include the following:
    - Coordination with a local car-sharing vehicle service to reserve five parking spaces for residents and visitors of this project;
    - Provide a one-time membership fee subsidy of \$35 per residential unit for residents to join a local car-sharing service;
    - Providing all new residents, upon move-in, a complimentary SmartTrip card with \$20 Metro fare to encourage the use of mass transit;
    - Providing an on-site business center to provide residents access to a copier, facsimile machine, and internet services;
    - Providing a secure bicycle storage space for each residential unit; and
    - Designating a member of building management as a point of contact who is responsible for coordinating and implementing transportation demand management incentives.

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13. The PUD shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit for the construction or renovation of one of the residential buildings as specified in 11 DCMR §§ 2404.8 and 2409.1; the filing of the building permit application will vest the Zoning Commission Order. An application for the final building permit completing the development of the approved PUD project must be filed within seven (7) years of the issuance of the final certificate of occupancy for the first building.

For the reasons stated above, the Commission concludes that the applicant has met the burden, it is hereby **ORDERED** that the application be **GRANTED**.

On October 20, 2008, the Zoning Commission **APPROVED** the application by a vote of **3-0-2** (Peter G. May, Michael G. Turnbull, and Anthony J. Hood to approve; Gregory N. Jeffries, not having participated, not voting; Curtis L. Etherly, Jr., not present, not voting).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on December 8, 2008 by a vote of **3-0-2** (Anthony J. Hood, Michael G. Turnbull, and Peter G. May to adopt; Gregory N. Jeffries, not having participated, not voting; the third Mayoral appointee position vacant, 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 |
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