

**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 (Cancelled)		
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
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D.C. SPORTS & ENTERTAINMENT COMMISSION
SCHEDULE OF MONTHLY BOARD MEETINGS - 2009

<u>Date</u>	<u>Time</u>	<u>Place of Meeting</u>
February 4	8:30 a.m.-11:00 a.m.	RFK Stadium
March 4	8:30 a.m.-11:00 a.m.	RFK Stadium
April 1	8:30 a.m.-11:00 a.m.	RFK Stadium
May 6	8:30 a.m.-11:00 a.m.	RFK Stadium
June 3	8:30 a.m.-11:00 a.m.	RFK Stadium
July 1	8:30 a.m.-11:00 a.m.	RFK Stadium
August 5	8:30 a.m.-11:00 a.m.	RFK Stadium
September 2	8:30 a.m.-11:00 a.m.	RFK Stadium
October 7	8:30 a.m.-11:00 a.m.	RFK Stadium
November 4	8:30 a.m.-11:00 a.m.	RFK Stadium
December 2	8:30 a.m.-11:00 a.m.	RFK Stadium

Contact: DC Sports & Entertainment Commission – 202.547.9077

**WASHINGTON CONVENTION CENTER AUTHORITY
BOARD OF DIRECTORS**

NOTICE OF SPECIAL MEETING

The Board of Directors of the Washington Convention Center Authority, in accordance with Section 742 of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Code Section 1-1504, hereby gives notice that it has scheduled a Special Meeting for January 16, 2009. The meeting will take place in the Dr. Charlene Drew Jarvis Board Room of the Walter E. Washington Convention Center, 801 Mt. Vernon Place, N.W., Washington, D.C. 20001, beginning at 10 a.m.

For additional information, please contact:

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

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

Application No. 17729-A of Morrison-Clark Limited Partnership I and Morrison-Clark LP, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the use provisions of subsection 350.4(d), a variance from the nonconforming structure provisions of subsection 2001.3, a variance from the rear yard requirements of § 404, and a special exception from the roof structure setback requirements of subsection 400.7, pursuant to subsection 411.11, to allow the renovation and expansion of an existing inn, located in the DD/R-5-E District at premises 1015 L Street, N.W. (Square 341, Lots 63, 69, 70, 831 and 832).

HEARING DATE: March 11, 2008

DECISION DATE: March 11, 2008

DATE DECIDED TO RECONSIDER: May 6, 2008

DATE OF DECISION AFTER RECONSIDERATION May 27, 2008¹

ORDER ON MOTION FOR RECONSIDERATION AND REHEARING

This self-certified application was filed with the Office of Zoning (“OZ”) on September 13, 2007, by Morrison-Clark Limited Partnership I and Morrison-Clark LP (“Applicant”), the owner of the property which is the subject of this application (“subject property”). The application requests three variances and one special exception to enable the Applicant to renovate and enlarge an existing historic inn located at 1015 L Street, N.W.

The Board of Zoning Adjustment (“Board” or “BZA”) held a hearing on the application on March 11, 2008. There were no parties in opposition, but one person, the owner of a condominium unit in the adjacent Quincy Park condominium building testified to her concerns with the proposed project. Advisory Neighborhood Commission (“ANC”) 2F, the ANC within which the subject property is located, did not appear at the hearing but submitted a detailed letter in support of the project. At the conclusion of the hearing, the Board voted 4-0-1 to orally grant the application, and on March 31, 2008, a Summary Order was issued memorializing that decision. Exhibit No. 35.

On April 10, 2008, ANC 2F filed a timely motion for reconsideration and rehearing (“motion”), alleging, *inter alia*, that it had never seen the final plans which were presented to the Board at the

¹The date of the decision after reconsideration was originally set for May 20, 2008, but was postponed for a week in order to permit all necessary Board members to read the transcript of the deliberations of May 6, 2008.

March 11th hearing, and, that if it had, it almost certainly would not have supported the application. Thus, the ANC withdrew its support and requested that the Board reconsider its decision. In addition, the ANC requested a rehearing to address several issues. The major issue the ANC wanted addressed was the impact of the new construction on the adjacent condominium building, specifically the close proximity of its rear wall to the south-facing wall of the adjacent building, which, the ANC opined, had not been adequately addressed by the Board at the March 11, 2008 hearing.² The ANC motion also asserted that a rehearing was necessary due to the Applicant's alleged failure to substantiate its claim of lack of marketability of certain buildings on the subject property and due to questions of proper notice. Exhibit No. 37.

At its public meeting on May 6, 2008, the Board deliberated upon the motion and decided, by a vote of 4-0-1, to grant reconsideration, in order to take into account the new position of the ANC in opposition to the application. The Board also voted 4-0-1 to deny rehearing. At a Special Public Meeting on May 27, 2008, the Board re-addressed the issues brought up in the motion and decided, by a vote of 5-0-0, not to change any of the relief originally granted, but to affirm it.

Conclusions of Law

The Board granted reconsideration, and reconsidered its decision, but is not persuaded that that decision should be changed, or that a rehearing is necessary. The ANC's motion focuses on four issues: (1) whether the impact of the proximity of the proposed project on the adjacent condominium building was adequately addressed by the Board, (2) whether that impact amounts to a substantial detriment to the public good, (3) the alleged failure of the Applicant to substantiate its claim of lack of marketability of the part of the subject property that formerly belonged to the Chinese Community Church, and (4) questions concerning the adequacy of notice, specifically to the individual condominium unit owners.

The Board has sufficiently considered the impact of the proximity of the proposed project on the adjacent condominium building

Prior to the hearing, the Board was aware of the proximity of the rear wall of the proposed addition to the Quincy Park building. Before the hearing, the Board was presented with the Applicant's plans, dated February 26, 2008, which depict the proximity of the proposed project to the adjacent Quincy Park condominium building. Exhibit No. 24, Attachment D. These plans, and a last, 2-page partial set of plans presented at the hearing, show the same proposed footprint as the earlier plans dated September 12, 2008, which are marked in the record as Exhibit No. 10. Each of these plans informed the Board of the relationship of the rear wall of the proposed construction to the south-facing wall of the Quincy Park building.

At the hearing, the Board heard testimony from one of the condominium unit owners concerning the proximity of the proposed rear wall to the Quincy Park building. The unit owner testified as

²The rear wall of the proposed addition will be constructed at the rear lot line and the south-facing wall of the Quincy Park condominium building is located approximately three feet from that line.

to her concerns with the project, which included its proximity to her building and the adverse impacts that she claimed would result. Specifically, she testified to loss of light and air into the windows on the south-facing wall of the Quincy Park building, potentially adversely affecting the use and enjoyment of the affected condominium units. *See, e.g.*, March 11, 2008 Hearing Transcript (“Transcript”) at 247, lines 4-7, 254-255, lines 20-22 and 1-2, and 255, lines 4-5.

The proximity of the walls of the two buildings was discussed at some length by the Applicant’s architect and the Applicant’s counsel, both of whom the Board engaged in an extended colloquy on the issue, including some discussion of possible detrimental effects. The architect stated that no windows on the Quincy Park building will be completely blocked, with at least three feet of open space between the closest windows and the wall of the new addition, but conceded that this may result in more diffused light than is presently available to the Quincy Park windows. *See, e.g.*, Transcript at 260, lines 6-21. Applicant’s counsel, however, explained that, due to Building Code restrictions, windows on this south-facing wall should not be relied on to provide required light and ventilation to their condominium units. Transcript at 256-257, lines 20-22 and 1-2, and 257, lines 18-21.

The Board was well aware of the proximity of the rear wall of the proposed addition to the south-facing wall of the Quincy Park building and thoroughly considered it at the hearing. It heard testimony, and engaged both the Applicant’s architect and the unit owner with questions about the proximity issue and its potential ramifications. *See, generally*, Transcript at 245-264. At the close of the hearing, the proximity issue was specifically considered by the Board members during their deliberations. *See*, Transcript at 290-292. Therefore, at every step of these proceedings, the Board addressed the issue and there is no need for a further hearing on it.

Any impacts of the proximity of the proposed project to the Quincy Park building do not amount to a substantial detriment to the public good

Even though the proximity issue was fully addressed at the hearing, the Board granted the ANC’s motion to reconsider the issue, but, in the end, reached the same conclusions it had reached during its original deliberations, and did not change its decision to grant the application. No substantial detriment to the public good or impairment of the zone plan will be caused by the placement of the rear wall of the addition. There will be approximately three feet of open space between the addition and the Quincy Park building, and any effect on light and air will be minimal. Placing the rear wall of the addition on the rear lot line eliminates the less-than-optimal rear yard, continuing the building façade along the alley and making for a more appropriate and harmonious design. On the whole, the entire project has been sensitively designed to integrate harmoniously with the historic structures, and permitting the expansion of the hotel use is consistent with the purposes of the DD Overlay. *See*, 11 DCMR §§ 1700.3(a) and 1700.3(c). Therefore, granting of the use and area variances requested will not be a substantial detriment to the public good nor will it cause any impairment of the zone plan.

Moreover, although the ANC eventually rescinded its support letter, that letter specifically states that there would be no substantial detriment if the proposed addition is constructed without a rear yard, demonstrating that the ANC knew that the addition would be built to the lot line, and in effect, recognizing that, even with this proximity, there would be no substantial detriment. Exhibit No. 25, at 3. The ANC then switched its position, but the Board concludes that its first position is the better one.

The non-marketability of the former Church buildings was sufficiently established in the record

The ANC also contends that the Applicant failed to substantiate its representations as to the non-marketability of the former Church buildings.³ The marketability or non-marketability of the buildings in question is addressed in the record of this case (*See, e.g.*, Exhibit No. 24, Applicant's Prehearing Statement, at 9-12) and in any event, the granting of the use variance did not hinge on the non-marketability of the buildings. Whether or not a property is marketable is not the test of undue hardship for a use variance, that test is whether or not a property can be reasonably adapted for a use permitted in the zone in question. *See, e.g., Bernstein v. D.C. Bd. of Zoning Adjustment*, 376 A.2d 816, 819-820 (D.C. 1977). Once the Applicant became the owner of the buildings, it needed to show that they could not be reasonably adapted for a use permitted in the zone, which it did to the Board's satisfaction.

Proper notice was provided

The last issue touched upon by the ANC in its motion is a potential lack of notice. The unit owner who testified at the hearing claimed generally that the unit owners had not been kept informed of the evolution of the Applicant's project and the ANC's motion states that there had been no notice to the unit owners of any meetings with the Applicant. Exhibit No. 37, at 5. The unit owner, however, appeared at the hearing, because the property was properly posted. *See*, Exhibit No. 23. From what could be discerned from the record, OZ had also sent proper notice to her condominium association. *See*, Exhibit No. 9, at 3 (notice sent to "Condominium Association for 1001 L Street," *i.e.*, the Quincy Park building) and Exhibit No. 21; and *see* 11 DCMR § 3113.13(b). Section 3113.13(b) provides that the Office of Zoning must provide notice to the "board of directors or to the association of the condominium," and does not mandate that separate notice be sent to each unit owner. The proper notice was sent to the condominium board and all other applicable methods of notice listed in subparagraphs 3113.13 (a) – (e) were also performed by the Office of Zoning. Therefore, the Board finds no failure as to proper notice.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC. D.C. Official Code § 1-309.10(d) (2001). Great weight means acknowledgement of those issues and concerns and an explanation of why the Board did or did not find the ANC's views persuasive. The Board, after again assessing the proximity issue and its potential effects, as well

³The ANC separately states in its motion that the Applicant made misleading statements to it concerning the non-marketability of the former Church buildings. The ANC does not contend, however, that the Applicant made any such statements to the Board; therefore, there is nothing here for the Board to reconsider.

as the other issues raised by the ANC on reconsideration, has once more determined that they do not rise to the level of requiring the Board to change its decision. Further, neither these issues nor the ANC's withdrawal of its recommendation of approval, and consequent opposition to the application, warrant a rehearing.

For the reasons stated above, the Board concludes that ANC 2F has not met its burden of demonstrating that it is entitled to rehearing on the issues raised in its motion, and, having already granted a reconsideration of these issues, and having reconsidered them, the Board declines to change its decision, and therefore **AFFIRMS THE RELIEF GRANTED IN ORDER NO. 17729** and **DENIES** the relief requested in ANC 2F's motion for reconsideration and rehearing dated April 10, 2008.

VOTE ON ORIGINAL APPLICATION:

4-0-1

(Ruthanne G. Milller, Curtis L. Etherly, Jr., Marc D. Loud, and Shane L. Dettman to approve; Mary Oates Walker abstaining.)

VOTE ON MOTION FOR RECONSIDERATION AND REHEARING

4-1-0

(Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman, and Mary Oates Walker to grant reconsideration, but to deny rehearing; Curtis L. Etherly, by absentee ballot, to deny both reconsideration and rehearing)

VOTE AFTER RECONSIDERATION, TO AFFIRM ORIGINAL RELIEF

5-0-0

(Ruthanne G. Miller, Curtis L. Etherly, Jr., Marc D. Loud, Shane L. Dettman, Mary Oates Walker to affirm original relief granted)

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

Each concurring Board member has approved the issuance of this order.

FINAL DATE OF ORDER: DECEMBER 30, 2008

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

Application No. 17736 of District-Properties.com, LLC, pursuant to 11 DCMR § 3101.2 for a variance from the rear yard requirement of § 404, a variance from the side yard requirement of § 405, and a variance from the parking requirement of § 2101.1, to allow the construction of a new one-family semi-detached dwelling in the R-5-B district at premises 1961 H Street, N.E. (Square 4506, Lot 163).¹

HEARING DATES: March 25, 2008 and May 27, 2008

DECISION DATE: July 1, 2008

DECISION AND ORDER

This application was submitted to the Board of Zoning Adjustment (“BZA” or “Board”) on September 20, 2007 by District-Properties.com, LLC (“Applicant”), the owner of the property that is the subject of this application (“subject property”). The self-certified application requested variance relief to allow the construction of a new one-family dwelling on a vacant lot in an R-5-B zone district.

The Board held a hearing on the application on March 25, 2008 which, due to a failure to post the property, was continued to May 27, 2008, at which time a decision on the application was set for July 1, 2008. At its public decision meeting on July 1, 2008, the Board denied the application by a vote of 4-0-1.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated September 28, 2007, the Office of Zoning (“OZ”) provided notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 5B, the ANC within which the subject property is located, Single Member District 5B12, and the Councilmember for Ward 5. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register* and sent such notice to the Applicant, ANC 5B, and all owners of property within 200 feet of the subject property.

Request for Party Status. ANC 5B was automatically a party to this application. The Board granted party status to the only immediate neighbor of the subject property, who appeared and testified in opposition at the hearing.

¹The application was originally advertised for a variance from the rear yard requirement of § 404 and a variance from the floor area ratio requirement of § 402 in order to permit construction of a row dwelling, but during the proceedings, the plans were changed, necessitating a change in the relief requested and the classification of the dwelling to be constructed.

Government Reports. On March 18, 2008, the Office of Planning filed a report with the Board recommending approval of the revised application. Prior to filing this report, OP had worked with the Applicant to reduce the proposed floor area ratio ("FAR") of the dwelling, eliminating the need for FAR relief. OP also recommended that the Applicant add a small side yard where none was originally proposed, and that he drop plans for a driveway off H Street, N.E., and request a parking variance instead. The Applicant agreed to both recommendations, as depicted in the final plans. *See*, Exhibit No. 20. In its report, OP addressed the final relief requested and opined that the application met the test for each variance.

ANC Report. ANC 5B did not file a report with the Board or appear at the hearing.

Persons in Support or in Opposition. Other than the neighbor granted party status, no one appeared as a person in support or opposition to the application and no letters in support or opposition were filed in the record.

FINDINGS OF FACT

The subject property and the surrounding neighborhood

1. The subject property is located at address 1961 H Street, N.E., at the southwestern corner of the intersection of H Street, N.E. and 21st Street, N.E., and in an R-5-B zone district (Square 4506, Lot 163).
2. The subject lot is currently vacant and is the last lot in a long line of lots fronting on H Street, N.E., each of which is improved with a row dwelling.
3. The subject property has a lot width of 19 feet, and an area of approximately 935 square feet.
4. The Zoning Regulations do not prescribe a minimum lot width or area for a one-family dwelling in an R-5-B zone. *See*, 11 DCMR § 401.3.
5. Inclusive of a 15 foot deep building restriction line, Applicant's property is 30.93 feet deep on the east and 67.45 feet deep on the west. Not including the area in front of the building restriction line, the property is, accordingly, 15.93 feet deep on the east and 52.45 feet deep on the west.
6. The eastern side lot line, as it continues south from H Street, angles away from 21st Street and continues at an angle until it reaches the western side lot line, ending at a point, thereby turning the southern half, *i.e.*, the rear portion, of the lot, into a right triangle.
7. The neighborhood surrounding the property generally consists of two-story row dwellings and garden apartments, with a prominent exception in that a multi-family housing project is located directly south of, and also across 21st Street from, the subject property.

The proposed project

8. The Applicant proposes to construct a 1,586-square-foot, three-story, semi-detached dwelling, the lot occupancy and FAR of which would be within the maximum permitted in the R-5-B zone. *See*, 11 DCMR §§ 403.2 and 402.4.
9. The proposed dwelling will share a party wall with the row dwelling to the west.
10. The rear yard of the proposed dwelling will average eight feet in depth, when 15 feet is required. 11 DCMR § 404.1.
11. Pursuant to 11 DCMR § 405.5, the proposed semi-detached dwelling does not need to provide a side yard because it is a corner lot, but the application proposes a three-foot side yard running alongside part of the dwelling from its front wall to a point just beyond where the eastern side lot line angles toward the west. Alongside the rest of the eastern side of the dwelling, there will be no side yard.
12. Because the proposed semi-detached dwelling will have a side yard, it must be a minimum of eight feet in width, and therefore variance relief for the five-foot deficit is needed. *See*, 11 DCMR §§ 405.2 and 405.9.
13. The dwelling will not include a parking space, necessitating relief from the parking requirement of 11 DCMR § 2101.1.
14. The proposed dwelling will include a porch which appears to be located in front of the building restriction line and for which a public space permit will be required.

The variance relief*Exceptional condition*

15. The subject property is exceptionally small.
16. The subject property is irregularly shaped in that it is twice as deep on its west side, the side adjacent to the next row dwelling, as on its east side, along 21st Street, N.E.
17. The property is a corner lot with no rear alley access to the property.

Practical Difficulty

18. Due to the small size of the property, the angled side lot line and the building restriction line at the front of the property, the Applicant is unable to construct a dwelling within a reasonable building envelope without relief from the 15-foot rear yard depth requirement.
19. DDOT will not permit a curb cut at the proposed location because of its proximity to the intersection of H and 21st Streets, N.E.

20. Due to the size and configuration of the property, the lack of alley access and DDOT's refusal to permit a curb cut, the site cannot be developed without relief from the parking requirements.
21. Because the property narrows to less than 7 feet at the southern end of the house, the Applicant cannot provide an 8 foot side yard.

Substantial detriment to public good and impairment of zone plan

22. The proposed dwelling will have a 3-foot side yard along 21st Street, whereas all other buildings along 21st Street are set back more than 10 feet.
23. The proposed dwelling will be three stories tall; whereas all the other row dwellings in the line along H Street are two stories tall.
24. The record is unclear as to whether the proposed dwelling will align with the other row dwellings along H Street or will project further forward. The Applicant's front porch will be in front of the building restriction line; whereas the location of the front porches of the other row dwellings with respect to the building restriction line was not established.
25. If the proposed dwelling does not align with the other row dwellings along H Street, it will be out of character with the neighborhood and will impede views along H Street, N.E.
26. The treatment of the side of the proposed dwelling facing 21st Street is inconsistent with other building faces along 21st Street, the latter of which present more fully articulated facades.

CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2.

A showing of "practical difficulties" must be made for an area variance, while the more difficult showing of "undue hardship," must be made for a use variance. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case therefore had to demonstrate an exceptional situation or condition of the property, that such exceptional condition

results in “practical difficulties” to the Applicant, and that the granting of the variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The subject property is exceptionally small and oddly-shaped, coming to a narrow point at its rear. In addition, it has no alley access and because of its corner location, any building will have facades on two streets.

The exceptional condition of the property presents practical difficulties for the Applicant in constructing the proposed dwelling. The small size of the lot leaves little room for a parking space and leads the Applicant to build up. The odd shape of the lot precludes a rear yard of the requisite depth. The corner lot aspect prohibits the cutting of a curb cut, preventing the provision of the required parking space. The corner lot aspect also makes some side yard/court space along 21st Street preferable, which then creates the need for another variance in order to maintain a practicable dwelling width.

All of these practical difficulties, however, point up the fact that the proposed dwelling is incompatible with the neighborhood and will have a substantial detriment to the public good. The lot is small, and the Board concludes, too small for the proposed dwelling to be in harmony with the neighborhood. Because of the small size of the lot, the applicant has designed a dwelling that will be three stories tall, when all the other row dwellings in the line fronting H Street, N.E. are only two stories tall. Such a three-story dwelling will be out of character with the other dwellings on the row. Further, as set back only three feet on the side from 21st Street, the proposed dwelling will be out of harmony with the other buildings along that street, that are set back at least 10 feet from the street. Finally, the lack of clarity with respect to whether the Applicant’s front porch will align with the other dwellings along H Street raises further concern with respect to the compatibility of the proposed dwelling with the other dwellings in the row.

In conclusion, although the first two prongs of the variance test are met, the third prong is not. The subject corner lot is too small and too exposed to support the Applicant’s proposal without substantial detriment to the public good. “It is well established that a variance may not be granted, even to alleviate a bona fide serious hardship to the owner, if the granting thereof would adversely affect the surrounding neighborhood.” *Roumel v. D.C. Bd. of Zoning Adjustment*, 417 A.2d 405, 409 (D.C. 1980), quoting *Clerics of St. Viator, Inc. v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291, 294-295 (D.C. 1974).

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

There was no report from the ANC to which to accord great weight. However, OP recommended granting the requested variances. The Board agrees with OP with regard to the first two prongs of the variance test, but disagrees with it as to the last prong. OP, in its report, recognized that

the proposed dwelling would have some negative impact on the neighborhood and on the immediate neighbor, but concluded that it did not rise to the level of substantial detriment to the public good. After considering all the evidence in the record, and for the reasons set forth above, the Board is convinced that granting the requested relief would result in a dwelling that is out of character with the dwellings on the two streets it would front and would result in substantial detriment to the public good. Accordingly, the Board concludes that the Applicant has failed to satisfy the burden of proof under § 3103.2 with respect to area variances from the rear yard requirements of § 404, the side yard requirements of § 405, and the parking requirement of § 2101.1. It is therefore **ORDERED** that the application be **DENIED**.

VOTE: **4-0-1** (Ruthanne G. Miller, Shane L. Dettman, Mary Oates Walker and Michael G. Turnbull to deny. No fifth member participating or voting.)

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

Each concurring Board member has approved the issuance of this order.

FINAL DATE OF ORDER: DECEMBER 31, 2008

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

Application No. 17798 of Primal Fitness, Inc., pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to operate a fitness center under subsection 330.5, in the R-4 District at premises 219 M Street, N.W. (Square 555, Lot 805).

HEARING DATE: July 22, 2008

DECISION DATE: August 1, 2008 and September 9, 2008

DECISION AND ORDER

This application was filed on March 11, 2008 by William D.C. Valentine and Raymond J. Valentine (collectively, "Applicant"), the owners of the property that is the subject of this application ("subject property"). The Applicant filed the application on behalf of Primal Fitness, Inc., the lessee of the building on the subject property. The self-certified application requested a use variance to allow the continuation of the use of the subject property as a fitness center, a use not permitted as of right in an R-4 zone district.

The Board heard the case on July 22, 2008 and, after requesting further information from the Applicant, set a decision date of August 1, 2008. At its public meeting on August 1, 2008, the Board decided to again ask for more information from the Applicant and set a new decision date for September 9, 2008. After deliberation on September 9th, the Board decided by a vote of 5-0-0 to grant the application for a term of nine months, subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 14, 2008, the Office of Zoning ("OZ") sent notice of the filing of the application to the D.C. Department of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 6C, the ANC within which the subject property is located, Single Member District 6C02, and the Council Member for Ward 6. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register*, and provided such notice to the Applicant, the ANC, and all owners of property within 200 feet of the subject property.

Request for Party Status. ANC 6C was automatically a party to this case. The Board granted party status to one of the neighbors immediately adjacent to the subject property. The neighbor, Ms. Keys, operates a small grocery store in the building just to the east, which is separated from the subject property by an open area of approximately eight and one-half feet. Ms. Keys appeared as a party opponent and claimed that the fitness center use caused her property damage and physical and mental distress.

Applicant's Case. The Applicant, and the operator of the fitness center, Mr. Toorock, both testified at the hearing and explained the need for the use variance. The Applicant also entered

into the record the report of a structural engineer/building inspector, who suggested measures to mitigate any negative impacts on the adjacent property of Ms. Keys.

Government Reports. The Office of Planning filed a report with the Board on July 15, 2008 recommending approval of the requested use variance. OP assessed the application in the context of the three prongs of the use variance test and determined that the application met all three.

ANC Report. ANC 6C filed a letter with the Board on July 16, 2008, stating that at a properly-noticed regularly-scheduled meeting with a quorum present, it had voted unanimously to delay consideration of the application to allow the Applicant time to address the neighbor's complaints. The ANC's letter expressed a desire that the Applicant report back to it at its September, 2008 meeting.

Persons in Support or Opposition. The immediately-adjacent neighbor to the west, filed a letter in support, claiming that the fitness center does not have any particularly objectionable impacts on him, even though his dwelling shares a party wall with the fitness center building.

FINDINGS OF FACT

The Subject Property

1. The subject property is located at 219 M Street, N.W., in the Mount Vernon Historic District and in an R-4 zone district.
2. The area of the property is 4,430 square feet, with a lot width of approximately 44 feet and a lot length of approximately 110 feet.
3. The subject property is improved with a large, two-story brick building constructed at the turn of the 19th century as a firehouse, which is a contributing building to the Mount Vernon Historic District.
4. The building was used as a firehouse until 1974 and has since been used solely for commercial uses, some of which could even be characterized as light industrial uses.
5. The building has never been used as a dwelling and was vacant for approximately ten years before the lessee herein began to use it, in October, 2007, as a fitness center or gym.
6. The building shares a party wall with a one-family dwelling immediately to the west.
7. Between the firehouse building and the next building to its east, which houses the opponent's business, is an open area approximately 8.5 feet wide.
8. The firehouse building extends toward the rear alley a significant distance, approximately one-half the length of its lot, beyond the rear wall of the adjacent building to the east.

9. An eight-foot-tall, nine-inch thick, solid brick wall connects the rear portion of the adjacent building to the east to a part of the firehouse building that juts out toward the east.
10. The Applicant cut away a 4-inch-wide section of this wall in order to reduce the traveling of vibrations from the firehouse to the adjacent building to the east.
11. Behind the firehouse is a very small rear yard area which abuts a rear alley located at approximately a five foot higher grade than the rear yard.
12. The building does not provide a zoning-compliant parking space, but does have two driveways in its paved front yard area.
13. The D.C. Office of Tax and Revenue taxes the subject property at a commercial rate.

The Surrounding Neighborhood

14. The firehouse is one of seven buildings located at a point where a short strip of M Street, N.W. angles off New York Avenue, N.W. Five of these buildings, to the east of the property, front directly on New York Avenue, while the firehouse and the building to its west essentially front on both M Street and New York Avenue.
15. All seven buildings are zoned R-4, but only one is used solely as a residence; the others contain commercial, office, or institutional uses.
16. New York Avenue is a major, six-lane thoroughfare which carries a high traffic volume, including large trucks and buses.
17. Other than the seven buildings fronting on New York Avenue, Square 555, in which the property is located, contains several row dwellings and two churches.
18. The surrounding area is characterized by mostly row dwellings, although across New York Avenue are located multifamily dwellings and institutional uses.
19. Approximately one block to the west of the property is the intersection of New York Avenue and New Jersey Avenue, another major thoroughfare, with the entrance to Interstate 395 approximately one-quarter of a mile away.

The Proposed Use

20. The lessee uses the firehouse building for his two businesses, Primal Fitness and American Parkour Company. The former is a physical fitness training facility, and the latter is an internet-based business consisting of an on-line retailer and community website promoting

the sport of parkour.¹

21. Primal Fitness is a gym specializing in an extreme work-out system, which requires strenuous weightlifting and body-building, including the lifting, and dropping, of heavy weights.
22. Weight training classes had been held in the front, first floor room, but the dropping of weights above 95 pounds has been moved exclusively to the rear of the facility to try to reduce noise and vibrations reaching adjacent buildings.
23. Primal Fitness layers two sets of ¾ inch padding over a third rubber pad on the concrete floors in the areas being used for gym purposes.
24. Primal Fitness also provides instruction in the sport of parkour to its clients, who jog through the neighborhood and use other local facilities during their workouts.
25. Applicant's clients include law enforcement officers, fire fighters and other community members.
26. The two businesses on the subject property – Primal Fitness and American Parkour Company – are integrated and share office space, staff, and a small t-shirt storage and production area.
27. There is a total of four staff people on the premises, only one of whom drives a car to the site. Mr. Toorock arrives by bicycle or motorcycle, either of which is parked inside the building. Two other staff members use public transportation.
28. Primal Fitness is open from 6:30 a.m. to 8:00 p.m. each day.
29. Currently, Primal Fitness holds six class sessions a day, with an average of four to seven clients in each. The maximum number of class participants in a single class would be 20.

The Variance Test

Exceptional condition

30. The subject property presents an exceptional condition in that the firehouse building, although currently situated in an R-4 zone district, was never used for, and was never intended to be used for, a residential use.
31. The exterior and internal layout of the building on the subject property reflect its past raison d'être as a firehouse. Its façade displays two large garage entrances suitable for vehicles,

¹The sport of parkour turns the world into an obstacle course which its participants navigate in order to achieve greater agility and fitness. The OP report (Exhibit No. 21) quotes a January 13, 2008 Washington Post article on Mr. Toorock's teaching of parkour and defines the sport as "the art of moving through the world quickly, efficiently, elegantly, and playfully."

but no pedestrian-sized entrance. The interior is mainly composed of expansive, undivided spaces without demising walls. The building sits on a 6-8 inch thick solid concrete floor and has no functioning kitchen facilities and only one staircase, at the rear, leading to the second floor.

32. The first floor is also slightly sloped, with the front of the building approximately 6 to 8 inches lower than the rear. This was done to facilitate the draining of water from the fire equipment out the front of the building and to the street.
33. The subject property is also exceptional in that, although in an R-4 zone, it is set among other commercial uses and fronts on a very busy major street.²

Undue hardship

34. The location of the subject property in a commercial strip of buildings on a heavily-travelled thoroughfare, as well as interior aspects of the building itself, militate against using it for a permitted residential use.
35. It would be prohibitively expensive, with an initial estimate of \$500,000, to convert the firehouse building to residential use.
36. The open interior layout of the building would make it difficult to establish within it some of the non-residential uses permitted in this R-4 zone. *See*, 11 DCMR § 330.5.
37. The lack of rear alley access, parking, and a suitable drop-off/pick-up area militate against the establishment of any of the permitted non-residential uses permitted in the R-4 zone. *See, Id.*

Public good and zone plan

38. The dropping of heavy weights in the front room of the firehouse building caused vibrations which contributed to the cracking of plaster on the interior western wall of the adjacent building to the east. The Applicant has subsequently moved this activity to the rear of the building.
39. Cracks in the plaster of the interior western wall of the adjacent building do not reach, or affect, its ceiling.
40. The existence of the open area between the firehouse building and the adjacent building to the east, and the cutting of the brick wall connecting the rear portions of the two buildings, dampen vibrations reaching the latter building.

²Based partly on these factors, in January, 2000, the Board granted a use variance to permit commercial use of the building at the corner of M St, N.W. and New Jersey Ave., N.W., just one building to the west of the subject property. *See*, Board of Zoning Adjustment Case No. 16543, January 19, 2000.

41. The Applicant hired a structural engineer to investigate adverse impacts on neighboring property related to vibrations. The structural engineer recommended corrective and preventative measures, some of which Applicant has implemented and others which he has agreed to implement.
42. The Applicant has agreed to repair cracks in the plaster of the interior western wall of the adjacent building to the east, and has also agreed to place vibration sensors at the sites of the cracks which will be monitored for one year.
43. One of the gym exercises which caused the most noise and vibrations, tire flipping, has been eliminated entirely.
44. The floor padding used by Primal Fitness and the moving of heavy-weight-dropping exercises to the rear of the building will dampen any vibrations caused by the gym use.

CONCLUSIONS OF LAW

Use Variance Standard

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition” of the property, the strict application of the Zoning Regulations would “result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property....” D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. The “exceptional situation or condition” of a property can arise out of the structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). Relief can be granted only “without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.” D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2.

A showing of “practical difficulties” must be made for an area variance, while the more difficult showing of “undue hardship,” must be made for a use variance. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case is requesting a use variance, therefore, it had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in an “undue hardship” upon the Applicant. Lastly, the Applicant had to show that the granting of the variance will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The District of Columbia Court of Appeals (“DCCA”) has interpreted “undue hardship” to mean that a property cannot be put to any use for which it can be reasonably adapted. *See, Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). (“A use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a

manner consistent with the Zoning Regulations.”) *See also, Bernstein v. D.C. Bd. of Zoning Adjustment*, 376 A.2d 816, 819-820 (D.C. 1977) (“[I]t must be shown that strict application of the Zoning Regulations would preclude the use of the property for any purpose to which it may be reasonably adapted.”) In this case, there are no other permitted uses for which the property can be “reasonably” adapted.

Variance Test

The firehouse building itself provides the subject property with the exceptional condition necessary to meet the first prong of the variance test. The building was constructed as, and intended for use as, a firehouse, which is a matter of right use in all residence zones, 11 DCMR § 201.2 (u). It was so used for many, many years. The building was never intended to be used as a residence(s) and indeed has never been so used. The interior of the building precludes such residential use without substantial, and prohibitively expensive, changes. Nor is the exterior of the building appropriate for residential use, and this would be difficult to change because of the status of the building as contributing to the Mount Vernon Historic District. Further, the location of the building among other commercial uses and on a major thoroughfare carrying heavy traffic, militates against a residential use.

The application also meets the undue hardship prong of the use variance test. Not only is the firehouse building inappropriate for residential use, but it also would be difficult, if not impossible, to adapt the building for a non-residential use permitted in this R-4 zone. *See*, 11 DCMR §§ 330.5 and 330.6. All of the uses listed in subsections 330.5(d) through (i) and in § 330.6 require parking, which is neither available at the property nor required because of the firehouse building’s historic status. Some of the uses listed, such as a child/elderly development center, would likely need a safe area for drop-of and pick-up of patrons, which is also unavailable at the property. Even if parking were not an obstacle, most of the uses permitted, such as a dormitory, community-based residential facility, or a rooming house, would require such extensive rehabilitation of the interior of the firehouse building that the Board concludes that the building is not “reasonably” adaptable for such uses.

To meet the third prong of the variance test, the gym use must not be a substantial detriment to the public good and must not impair the intent and integrity of the zone plan and regulations. The Board concurs with the Office of Planning, to whom it affords great weight, that the adaptive reuse of this firehouse would not have a substantial detriment on the zone plan or the public good. The gym use proposed here is not out-of-scale with other non-residential uses that are permitted in this zone, but to which it would be difficult to adapt this building. Finally, the adaptation to this commercial use would not preclude the structure’s conversion at a later date to one of the permitted uses should that become feasible in the future. Accordingly, granting a use variance in this case would not impair the integrity of the zone plan.

The Board also concludes that the proposed use does not cause a substantial detriment to the public good. Because the firehouse is located on a commercial strip, with significant ambient noise from New York Avenue, its commercial activity will not disturb the neighborhood. In fact,

the reuse of this property as a fitness center will add vibrancy and security to the neighborhood. The one concern of the Board is that any vibrations from weight dropping in Applicant's gym be minimized so as to avoid any adverse impacts upon neighboring property. While the dropping of weights on Applicant's property has resulted in vibrations and contributed to the cracking of plaster on the adjacent building to the east, Applicant has taken steps and made commitments since then to eliminate or mitigate any adverse impacts from the dropping of weights, as recommended by the structural engineer hired by the Applicant to investigate this concern. The Applicant will repair the plaster and Primal Fitness will significantly decrease the noise and vibrations by moving the weight-dropping exercises to the rear of the building. Other recent initiatives undertaken by the gym operator, such as adding extra absorbent padding and cutting a gap in the brick wall extending behind the adjacent building, will likely also reduce any vibrations reaching the adjacent building.

While the immediate neighbor to the east also claimed physical and mental distress from vibrations from the fitness center, no medical documentation was submitted in support of this claim. No other individuals, including patrons of her grocery store, submitted any objections. Based on the evidence in the record, the Board was not convinced of the nexus between the use and the claimed distress. Finally, this neighbor also found objectionable Primal Fitness' clients' jogging in the neighborhood. No other neighbors, including the ANC, complained of this activity, which may legally be engaged in by any resident.

Although the firehouse building has been at the site for approximately 100 years, its use by Primal Fitness is a relatively recent phenomenon. The gym use has existed at the site for approximately one year. Therefore, as with any new or recent use, it is somewhat difficult to be certain of future impacts on neighboring property. With this particular use, the Board cannot discount its potential effects on the operator of the adjacent building to the east, about which concerns have been raised. The Board will therefore set a term of nine months for the gym use, in order to allow the use to operate as conditioned below, while ensuring that the applicant/gym operator appears before the Board again to assess, with community input, what impacts the use is having on the neighborhood.

For all of the above reasons, the Board concludes that the Applicant has satisfied the burden of proof under § 3103.2 with respect to a use variance. Accordingly, it is **ORDERED** that the application be **GRANTED, SUBJECT to the following CONDITIONS:**

1. Weights or any object weighing over ninety-five (95) pounds may be dropped only in the rear room of the first floor of the firehouse building.
2. The Applicant, at its own expense, will install appropriate sensors/monitoring devices on the western wall of the adjacent building to the east of the property in order to detect any adverse vibrational impact on this adjacent building. Any information or results obtained from these devices shall be monitored and compiled by the Applicant.

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

Application No. 17845 of Arnold Nicholson, pursuant to 11 DCMR § 3104.1, for a special exception to allow a two-story addition to an existing one-family row dwelling under section 223, not meeting the court requirements under section 406, in the R-4 District at premises 1418 K Street, S.E. (Square 1065, Lot 46).

HEARING DATE: November 18, 2008

DECISION DATE: December 16, 2008

SUMMARY ORDER

SELF CERTIFIED

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. Although ANC 6B had initially submitted a report in opposition to the application, subsequently, on December 10, 2008, ANC 6B submitted a supplemental report withdrawing its opposition and in support of the application. (Exhibit 28) The Office of Planning (OP) also submitted a report in support of the application. (Exhibit 23)

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

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: 4-0-1 (Shane L. Dettman, Ruthanne G. Miller, Mary Oates Walker, Marc D. Loud to Approve. Zoning Commission member, not present and not voting.)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: _____

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

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

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

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

TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. ESB

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

Application No. 17856 of Happy Paws LLC, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, and special exceptions to establish an animal boarding and pet grooming establishment under sections 735 and 736, in the C-2-A District at premises 4904 Wisconsin Avenue, N.W. (Square 1671, Lot 28).

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) 3E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3E which is automatically a party to this application. ANC 3E submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 735 and 736, and a variance pursuant to § 3103.2 from the requirements of subsection 2101.1. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 735 and 336, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Based upon the record before the Board, the Board further concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 2101.1, 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**.

VOTE: **4-0-1** (Ruthanne G. Miller, Shane L. Dettman, Marc D. Loud and Mary Oates Walker to approve, the Zoning Commission member not participating, not voting)

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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT

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

Application No. 17855 of District of Columbia CVS Pharmacy LLC and The Velmeir Companies, pursuant to 11 DCMR § 3103.2, for a variance from the parking requirements under subsection 2101.1, a variance from the loading requirements under § 2201.1, a variance from the location of accessory uses and buildings requirements under § 2500 to construct a CVS drug store in the GA (Georgia Avenue Commercial Overlay) /C-3-A District at premises 3642 & 3646 Georgia Avenue, N.W. (Square 2897, Lots 145 & 147).

Note: The application was amended to eliminate the request for special exception relief under subsection 1330.1(b) to allow development on a lot that has more than 12,000 sq. ft. of land area because it was determined that this area of relief was not needed for the project.

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) 1A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. ANC 1A submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under section 1330.1(b). 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 ANC and OP reports filed in this case, the Board concludes that in seeking variances from §§ 2101.1, 2201.1, and 2500, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application, pursuant to Exhibit No. 27 - Prehearing Submission - is **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Loading may only be scheduled to take place between the hours of 8:00 a.m. and 7:00 p.m., Monday through Friday;
2. No loading activities may take place within the public streets of Georgia Avenue, New Hampshire Avenue and Princeton Place; and
3. Installation of the brick dumpster enclosures and landscaping shall be as shown on Sheet No. 6, titled "South Elevation" and dated November 25, 2008.

VOTE: **5-0-0** (Ruthanne G. Miller, Marc D. Loud, Mary Oates Walker,
Shane L. Dettman and Michael G. Turnbull 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 19, 2008

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

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

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

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

ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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

TWR

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

Application No. 17859 of John Tichy and Melissa Loughlin, pursuant to 11 DCMR § 3104.1, for a special exception to allow the addition to an existing one-family dwelling under section 223, not meeting the lot occupancy, rear yard, and side yard requirements (sections 403, 404, and 405 respectively), in the R-3 District at premises 2038 Tunlaw Road, N.W. (Square 1301-E, Lot 472).

HEARING DATE: December 16, 2008

DECISION DATE: December 16, 2008 (Bench Decision)

SUMMARY ORDER

SELF CERTIFIED

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) 3B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3B, which is automatically a party to this application. ANC 3B submitted a report in support of the application. (Exhibit 29) The Office of Planning (OP) also submitted a report in support of the application. (Exhibit 29) In addition, three neighbors filed letters of support. (Exhibits 24, 28 (attachment), 9).

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

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: **5-0-0** (Ruthanne G. Miller, Michael G. Turnbull, Mary Oates Walker, Shane L. Dettman, and Marc D. Loud 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: _____

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

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

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

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

ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. ESB

Application No. 17862 of Clinton W. Anderson, pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear addition to an existing one-family row dwelling under § 223, not meeting the lot occupancy requirements under § 403 in the R-4 District at premises 4230 4th Street, N.W. (Square 3243, Lot 62).

Note: The Board found that relief from § 405 (side yard requirements) and § 2001.3 (nonconforming structure requirements) were not needed.

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) 4C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. ANC 4C submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

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

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application, pursuant to Exhibit No. 8 – Plans, is **GRANTED**.

VOTE: **5-0-0** (Ruthanne G. Miller, Shane L. Dettman, Mary Oates Walker, Marc D. Loud and Michael G. Turnbull 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 22, 2008

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

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE

OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

TWR

Zoning Commission Order No. 06-03A
Z.C. Case No. 06-03A
(Modification to a Design Reviewed and Approved within the Capitol Gateway (“CG”)
Overlay Zone for 100 M Street, S.E., Lot 77, Square 743-N)
March 26, 2007¹

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the “Commission”) was held on March 26, 2007. At the meeting, the Commission approved an application from Opus East, LLC (the “Applicant”) for a minor modification to an approved design for the mixed-use project being constructed at 100 M Street, S. E., that review having been carried out pursuant to Chapter 16 (Capitol Gateway Overlay) and the Consent Calendar Regulations of Chapter 30 of the District of Columbia Municipal Regulations (“DCMR”), Title 11, Zoning. Because each of the proposed modifications was deemed minor, a public hearing was not conducted.

The Commission determined that this modification request was properly before it under the provisions of Sections 1604 and 3030 of the Zoning Regulations.

FINDINGS OF FACT

By Z.C. Order No. 06-03, dated May 25, 2006, the Commission approved the design of a 12- story building containing general offices over a ground floor that provided all the floor area required for “preferred uses” under the provisions of § 1604 of the Zoning Regulations. The Commission also approved certain area variances in the initial hearing and Order.

The property, to be known as 100 M Street, S.E., is located at the northeast corner of M and First Streets, S.E.; it is also known as Lot 77 in Square 743-N.

The floor area ratio (“FAR”) of the property will remain unchanged at 10.0 FAR. The building height will remain unchanged, not exceeding 130 feet. Four levels of below-grade parking will still be provided, and vehicular access to this parking will still be provided from First Street, S.E.

By letter dated March 2, 2007 and diagrams accompanying that letter, the Applicant requested approval to modify the following aspects of the design approved May 25, 2006:

1. Modify the façade of the retail area at ground level and adjacent landscaping facing First Street, S.E., noting that these changes were necessitated by a widening of First Street’s “cartway” being planned by the District of Columbia’s Department of Transportation (“DDOT”) and corresponding elimination of areas that had previously been planned for outdoor seating in previously projected public space located between the property line and the edge of the official sidewalk closest to that property line;

¹ It was previously believed this Order was published in the *D.C. Register* on December 19, 2008. Upon learning that the Order was not published on said date, it was then published on January 9, 2009.

2. Secure flexibility to have one or two entrances into the ground floor area from the flanking sidewalk along First Street, S.E;
3. Reduce the “clear ceiling” height of the eastern retail area from 13’ 8” to 13’ 2” and reduce its depth from M Street, S.E., to no less than 45 feet, and dedicate the area between the relocated rear wall of this retail area and the loading berths and platforms as a fitness room for the building’s tenants (an accessory use) to be established at the same floor plane as the office entrance lobby rather than the lower plane of the eastern retail area; and
4. Modify the glazing on the eastern façade of the building to comply with requirements of the building code, which limits the percentage of glazing to 45% when abutting another property.

By letter dated March 15, 2007, the Applicant provided additional information and noted that the retail entrances along First Street, S.E., as well as the entrance to the portion of that retail corner facing both First and M Street, S.E., would require patrons to enter at a plane above that of the floor, the height varying from 13” along M Street to as much as 30” along First Street, S.E. (varying as a function of the grade of the planned adjacent sidewalk tapered up to the property line from the top of the projected curb along the widened segment of First Street, S.E.). Applicant indicated that the areas in which landings, stairways, and systems of ramps or devices to enable those with mobility limitations to reach the level of the retail area within that area would be in conflict with the definition of “clear ceiling, height of” in the Zoning Regulations and, accordingly, requested approval for these portions of the respective areas to be exempt from the measurements involved.

By memorandum dated March 16, 2007, the Office of Planning (“OP”) commented on the request and recommended approval of the requested modifications. The report described the changes being carried out by DDOT over which the Commission, the Applicant, and OP have no control. While the Commission does not support the widening of the “cartway” of First Street, S.E., between M and I Streets, S.E., which OP indicated is now planned by DDOT, it feels that the modifications requested by the Applicant are appropriate to the changed circumstances.

By letter dated March 22, 2007, Advisory Neighborhood Commission (“ANC”) 6D, indicated that it had, at its regularly scheduled March 12th meeting, at which a quorum was present, (with 4 of 7 commissioners necessary for a quorum), voted 5-0-1 to support the request of the Applicant for modifications to its previously approved project.

The Commission finds that requested minor modifications do not affect the essential elements of the approval given by the Commission for this project, including use, height, gross floor area, lot occupancy, setbacks, or number of parking spaces. While it reduces the percentage of the

ground floor area set aside for preferred uses, the total percentage of ground floor area in those uses still provides considerably more than the 35% required. The changes in the height of the ceiling of one retail area, and portions of the other for landings and stairs, are likewise of no great significance.

On March 26, 2007, at its special public meeting, the Commission reviewed the application as a Consent Calendar matter and granted approval of the minor modifications to the design originally approved.

The Commission concurs with the Applicant that approving the application is appropriate and is not inconsistent with the intent of 11 DCMR, §§ 1604 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission concludes that the proposed modifications are minor and do not change the intent of the previously approved Z. C. Order No. 06-03. Further, the Commission concludes that its decision is in the best interests of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

The proposed modification does not affect the essential elements of the approved design, including use, height, gross floor area, lot occupancy, setbacks, or number of parking spaces. Other than aspects noted, no other condition of the approved design will be affected. The material facts relied upon by the Commission in approving the design in Z.C. Order No. 06-03 have not changed except as set out herein. The modifications are minor such that consideration as a Consent Calendar item without public hearing is appropriate.

As provided in the decision, the Commission approves the modifications requested.

DECISION

In consideration of the Findings of Fact and Conclusions of Law provided herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the application for minor modifications of an approved design for the property located at the northeast corner of First and M Streets, S.E., in Square 743-N, Lot 77, known as 100 M Street, S.E. as set out in Applicant's letters of March 2, 2007 (summarized above in four numbered paragraphs) and March 15, 2007 (relating to clear heights of ceiling above stairs and landings). The Applicant shall have the flexibility to make any or all of the modifications it requested, but must otherwise follow the original approvals.

Vote of the Zoning Commission taken at its public meeting on March 26, 2007, by a vote of 5-0-0 (Carol J. Mitten, Gregory Jeffries, Anthony J. Hood, John G. Parsons, and Michael Turnbull to approve).

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 _____.

**EXECUTIVE OFFICE OF THE MAYOR
and**

**DEPARTMENT OF TRANSPORTATION
[4910-22-P]**

Federal Highway Administration

[Docket No. FHWA-2008-0189]

**Emergency Temporary Closure of I-395 & I-695 Southeast and Southwest Highway in the
District of Columbia**

AGENCIES: Federal Highway Administration (FHWA), DOT.

ACTION: Announcement for the District of Columbia to temporarily close the SE/SW Highway (I-395 & I-695), on January 20, 2009, for safety and security purposes for the Inauguration of the President of the United States.

SUMMARY: Pursuant to section 658.11(e) of title 23, Code of Federal Regulations, the Washington, DC Department of Transportation (DDOT) has requested approval of a plan to temporarily close segments of the Interstate to all traffic except motor coaches and buses – I-395 (from the 14th Street Bridge to New York Avenue), I-695 (from the 3rd Street Tunnel to the 11th Street Bridges), and I-295 (from I-695 to DC-295) – on January 20, 2009, beginning at 12:00 a.m., for one consecutive 24-hour period, because of the Presidential Inauguration.

I-395 would be closed to general purpose traffic at New York Avenue up to the 14th Street Bridge. I-695 would be closed to general purpose traffic at the 11th Street Bridges. I-295 would be closed to general purpose traffic at Pennsylvania Avenue.

The request has been made for the purposes of safety and security in and around the Capitol Building as well as for the critically needed space to park a portion of the expected 10,000 buses bringing people into the Washington area on January 20th. The Interstate routes included in the request are part of the National Network of highways that can safely and efficiently accommodate the large vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended, designated in accordance with 23 CFR Part 658 and listed in Appendix A.

This regulation limits the authority of the States to restrict the access of these commercial motor vehicles to the designated National Routes, and requires the approval of the FHWA for additions, deletions, exceptions and restrictions in accordance with 23 CFR 658.11. The FHWA has decided to approve the request by the DDOT as an emergency deletion in accordance with section 658.11(e) due to the safety considerations discussed in this notice. The FHWA is requesting comments from the general public on this determination.

Under title 23 of the Code of Federal Regulations, section 658.11 (Additions, deletions, exceptions, and restrictions), the FHWA can grant the closing of the Interstate system or other National Network route based upon specified justification criteria in section 658.11(d)(2). The FHWA is also authorized to delete any route from the National Network on an emergency basis based on safety considerations pursuant to section section 658.11(e). These emergency deletions are published in the Federal Register for notice and comment.

DATES: Comments must be received on or before January 16, 2009.

ADDRESSES: The letter of request along with justifications can be viewed electronically at the docket established for this rulemaking at <http://www.regulations.gov>. Hard copies of the documents will also be available for viewing at the DOT address listed below.

Mail or hand deliver comments to:

U.S. Department of Transportation,
Dockets Management Facility,
Room W12-140,
1200 New Jersey Avenue, SE.,
Washington, DC 20590,

or submit comments electronically at <http://www.regulations.gov> or Fax comments to (202) 493-2251.

Alternatively, comments may be submitted via the Federal eRulemaking Portal at <http://www.regulations.gov> (follow the on-line instructions for submitting comments).

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. All comments received into any docket may be searched in electronic format by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

Persons making comments may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78), or you may view the statement at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael P. Onder, Team Leader Truck Size and Weight and Freight Operations and Technology Team, (202) 366-2639,

Raymond W. Cuprill, Office of the Chief Counsel, (202) 366-0791, Federal Highway Administration; 1200 New Jersey Avenue, SE., Washington, DC 20590, and

Mr. Mark Kehrli, FHWA Division Administrator-Washington, DC, (202) 219-3536. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at: www.regulations.gov. The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at: http://www.archives.gov/federal_register and the Government Printing Office's Web page at: <http://www.gpoaccess.gov>.

Background

On January 20, 2009, as a result of the inauguration activities, the number of participants and spectators is expected to reach 2-4 million, overwhelming both the roadway and transit networks in the District of Columbia and will create a safety hazard for commercial traffic to traverse these routes during that time. This is one of the principal reasons for the closure of these routes to commercial traffic. Additionally, preliminary data indicates that approximately 10,000 or more motor coaches within a 1,000 mile radius of the District of Columbia are expected to travel to the District. As such, safety in normal transport and in the event of emergency evacuation requires creating transportation redundancy. That redundancy can best be created by allowing arrivals by motor coach to proceed directly (without transfer to transit or another vehicle) to the inaugural checkpoint areas and then by allowing the motor coaches to park within walking distance of the drop-off location. The identified segments of I-395/I-295/I-695, if temporarily restricted to prohibit general purpose traffic, provides the best and only feasible location for allowing large numbers of motor coaches to approach the departure from the inauguration and the subsequent parade while providing the possibility of expedited departures in the event of an emergency.

Temporary closure of these segments of Interstate to general purpose traffic means that the motor coaches can be moved in and out with maximum safety while providing the possibility of expedited departures in the event of an emergency. Temporary closure of these segments of Interstate to general purpose traffic also facilitates the movement of emergency vehicles into and out of the area, thereby enhancing safety. To further enhance safety, the motor coaches will be parked in the roadway approach spans, beyond the bridge limits. This will minimize bridge overloading and ensure routes for pedestrian traffic and emergency vehicles.

The temporary closure should have no impact on Interstate commerce. I-95, which is the main north-south Interstate route in the region, is signed around the Washington Beltway (I-495) so that Interstate traffic need not enter the District at all. Likewise, Interstate traffic seeking to go west via I-66 or I-270 can access either I-66 or I-270 via I-495 without ever entering the District. Likewise, traffic seeking to go east via US Route 50 can access US Route 50 via I-495 without ever entering the District.

Commercial motor vehicles, of the dimensions and configurations described in 23 CFR 658.13 and 658.15, serving the area can utilize the routes listed above in response to 23 CFR 658.11(d)(2)(ii). Vehicles serving the immediate area north of the temporarily restricted I-395/I-295/I-695 segments of the Interstate will be unable to do so because the local and National Highway System (NHS) street network will also be closed during the inauguration. Therefore, the closure of the I-395/I-295/I-695 segments of the Interstate will have no material effect on such traffic. Entities requiring deliveries within and adjacent to the area of closed local and NHS streets will be encouraged to receive deliveries before or after January 20th. To assist in facilitating interstate commerce the DDOT and other District government agencies will coordinate with local governments and adjacent jurisdictions (i.e. VA and MD) to minimize traffic disruptions. Requests will be made for adjacent jurisdictions to cooperate in routing traffic around the closure and warn interstate traffic of the closure by signs, and other means to get the message out to the trucking industry and the rest of the traveling public.

Authority: 23 U.S.C. 127, 315 and 49 U.S.C. 31111, 31112, and 31114; 23 CFR Part 658-.

Issued on:
