DISTRICT DEPARTMENT OF THE ENVIRONMENT

PUBLIC NOTICE

Interim Groundwater Policy

1. Statement of Policy

This interim policy clarifies DDOE's approach to groundwater protection in three key ways. First, this directive charges the DDOE Water Quality Division with the task of refining a comprehensive strategy for protecting the District's groundwater. Second, while we will evaluate and protect groundwater during the EISF process as well as under other regulatory regimes, we will focus on applying the groundwater criteria in 20 DCMR 7201.2 during the EISF process. These criteria require DDOE to evaluate, among other things, whether a project will ". . . significantly degrade groundwater resources." Third, this strategy clarifies the scope of DDOE's review under the EISF regulations. This three-part strategy will result in a more focused strategy for protecting the Districts groundwater, and will more narrowly tailor the kinds of ground-water investigations done during the EISF process.

This interim policy comprises one component of the District's approach towards protecting groundwater in the District. In addition to this policy (including amendments to the policy that will reflect the District's experience with implementing this policy), the District intends to:

a. promulgate standards pursuant to the District's VCP law, that will aid in expediting risk-based cleanups;
b. promulgate a body of regulations with which to implement the District's Superfund law set forth at D.C. Official Code §§ 8-631.01, *et seq*. The District intends to increase the use of Superfund authorities to bring to the table those persons whose activities may have caused ground-water contamination in the first instance;
c. enforce financial assurance requirements; and
d. devise model settlement agreements to expedite cleanups by responsible parties.

2. The EISF Process

The District's regulations at 20 DCMR §§ 7201, *et seq*., describe the District's program and procedures for evaluating the environmental impact of certain actions in the District. The Environmental Impact Statement Form (EISF) is the initial step in the process of evaluating the potential impact of a project. For any action that would cost more than $1 million (in 1989 dollars), the developer must submit an EISF to the lead agency, and any other reports or information to support the EISF, such as a project description, environmental assessments and traffic analyses.

In most cases, several departments within the District review the EISF, and the lead agency is responsible for coordinating the review of the departments and determining whether a full "Environmental Impact Statement" (EIS) is required. If the lead agency determines that an EIS is required, then the departments of the District are prohibited from issuing any permits for the project until the developer completes the EIS.[1]

[1] 20 DCMR § 7203.6

The regulations exempt certain actions from the EISF process, such as actions within the "Central Employment Area," actions that cost less than $1 million (unless the action imminently and substantially affects the public health, safety, or welfare), and actions for which an Environmental Impact Statement ("EIS") has been prepared under the National Environmental Policy Act of 1969.

When DDOE reviews a draft EISF, groundwater is one of several issues this Department examines, and the EISF regulations are specific about the criteria that DDOE must evaluate when reviewing the potential impact of the project on groundwater. As mentioned in Section 1 – Statement of Policy, the EISF regulations guide DDOE's review of an EISF. These regulations require DDOE to review the EISF to determine whether the proposed action:

- might significantly deplete . . . groundwater resources;
- might significantly . . . degrade groundwater resources;
- might significantly interfere with groundwater recharge; or
- might cause significant adverse change in existing surface water quality or quantity.[2]

3. The Challenges of the EISF Review Process

When a developer submits an EISF to the District for review, DDOE must evaluate the potential impact of the proposed project on groundwater resources using the criteria listed above in Section 2. However, the groundwater characterization data submitted during the EISF process comes to this Department piecemeal, as a result of a random process that depends on the timing of applications for development permits. Thus, DDOE receives groundwater data from locations that are not necessarily related to DDOE's priorities for groundwater protection.

In addition, the EISF process often overlaps with the District's voluntary site remediation programs. The VCP and VRAP are designed to encourage cleanup of contaminated property, and to manage and oversee such cleanups. It would be clearer for all parties involved, including DDOE, other District departments, and the developers, if the Department addressed groundwater once during one process, but not both.

4. DDOE's Strategy for Protecting Groundwater

This interim directive charges the DDOE Water Quality Division with developing a comprehensive strategy for protecting the District's groundwater. The strategy will focus on the priority actions that this Department must take to identify the nature and extent of contaminants in the District's groundwater, potential sources of groundwater contamination, potential impacts of groundwater contamination on human health and the environment, and strategies for protecting and improving the quality of groundwater in the District. I have asked the Water Quality Division to prepare this strategy as soon as practicable after the date of this directive. At present, the District's priorities are:

a. the cleanup of groundwater plumes (such as perchloroethylene plumes resulting from dry cleaning operations, or petroleum plumes resulting from leaking underground storage

[2] 20 DCMR § 7201.2

tanks) whose migration, and potential volatilization, can pose a threat to human health or the environment e.g., down-gradient daycare centers; and

b. the cleanup of groundwater plumes whose discharges to surface water bodies (such as the Anacostia River) could result in exceedances of surface water standards, total maximum daily loads (TMDLs) and/or harm to humans or biota;

5. Groundwater and the EISF Process

Section 2 of this Interim Directive describes the criteria that apply when the District reviews an EISF for potential impact on groundwater. Beginning on the date of this interim directive, DDOE will follow the approach described below using these criteria to evaluate the potential impact of an action on groundwater.

- "Might significantly deplete groundwater." Under this criterion, DDOE will evaluate whether a proposed action will remove a significant amount of groundwater without replenishing groundwater through re-injection or re-charge. If a proposed action will use groundwater as a source of water, then DDOE will evaluate the volume of groundwater proposed to be used. If the proposed action will involve a large volume of groundwater that will significantly reduce the water table, then the project might "significantly deplete" groundwater. However, most buildings in the District rely on the public water supplied through the D.C. Water and Sewer Authority (WASA) - not on groundwater. Therefore, the District expects that it will be the rare project that proposes to use groundwater for any purpose, especially in volumes that would "significantly" deplete groundwater.

  When a developer excavates property during the construction phase of a project, it is common for the excavation to encounter groundwater. In this situation, the developer usually "de-waters" the site by pumping the groundwater from the excavation, and discharging the water off site. Unless the de-watering process will require the removal of a significant amount of groundwater, it is unlikely that the de-watering process will "significantly deplete" groundwater.

- "Significantly degrade groundwater resources." To evaluate whether a proposed action will "significantly degrade groundwater resources," DDOE will examine descriptions in the EISF of the construction phase of the project as well as the operations of the proposed action post-construction. DDOE expects that the proposed action could significantly degrade groundwater resources where:

  - the construction activities themselves will add pollutants to the groundwater;
  - the post-construction uses will add pollutants to the groundwater; and
  - the construction will impede access to an existing plume (for example, if the proposed construction project will sit on top of a fissured bedrock formation, and impede cleanup of a DNAPL plume residing in the fissures).

  DDOE must examine, therefore, whether the proposed action after completion of construction will result in additional pollutants in the groundwater. This evaluation will focus on the nature of the operations proposed. For example, if the proposed action will involve the handling of hazardous substances or pollutants in a manner likely to result in spills, leaking, or any other discharge to groundwater, then DDOE

will closely scrutinize the potential impact of the proposed action on groundwater. If, however, the proposed action described in the EISF will not add any pollutants to the groundwater, then the proposed action is unlikely to "significantly degrade groundwater resources."

If the proposed action could have any of the above-described effects, or others that DDOE determines are endangering public health or the environment[3], then DDOE will need enough information to determine if the proposed project will in fact significantly degrade groundwater. For purposes of this interim policy, "significant degradation of groundwater resources" will not be triggered during the EISF review process solely by an exceedance of a water quality standard, except in those instances where the District has identified a down-gradient receptor such as a daycare center, that requires a higher level of protection.

- "Significantly interfere with groundwater recharge." This criterion requires DDOE to evaluate the potential impact of the proposed action on the property's ability to recharge groundwater. Thus, DDOE will examine whether the proposed action will result in a net increase in impervious surfaces. If, for example, the proposed action is located on property that is currently covered by impervious surfaces, then any development will not affect groundwater recharge because the property is not currently contributing to groundwater recharge. If, however, the proposed action will result in an increase in impervious surface, then the proposed action might reduce groundwater recharge, and DDOE would evaluate the significance of the potential interference with groundwater recharge. Note also that the development project may be subject to the District's stormwater regulations at 21 DCMR §§ 526 – 535.

- "Might cause significant adverse change in existing surface water quality or quantity." DDOE will examine several factors under this criterion. First, DDOE will evaluate a proposed action to determine if the proposed action will increase the pollutant loadings in nearby surface waters. If the proposed action will increase pollutant loadings, then DDOE must examine the amount of each pollutant to determine whether the increase will be significant. If the amounts of additional pollutant loadings individually or together are significant, then the proposed action might cause a significant adverse change to surface waters. Conversely, if the amount of pollutant loadings is small, then the proposed action is unlikely to cause significant adverse impacts on surface water quality or quantity. For purposes of this policy, unacceptable amounts of pollutant loadings are those that may cause exceedances of TMDLs, and amounts that may pose harm to sensitive biota (such as those that reside in the Anacostia River, and/or are associated with wetlands).

  DDOE will also evaluate whether the proposed action will significantly increase or decrease the volume of water in nearby surface waters. As an example, like the criterion in section 2 of this policy, DDOE will determine whether the proposed project will result in a net increase or decrease in impervious surface. If the proposed action will significantly increase or decrease the volume in nearby surface waters,

[3] For example, in certain circumstances, based upon data that may be collected in conjunction with a NPDES permit (as described below), DDOE may determine that construction will alter groundwater flow to such a degree that it will significantly degrade groundwater not heretofore impacted by a contaminant source.

then DDOE must also examine whether this is a desirable or undesirable result. In most cases, given the District's efforts to minimize storm water runoff, if a proposed action significantly increases runoff into surface waters, then the proposed action will likely produce a "significant adverse change in surface water quantity."

- In those situations where DDOE needs groundwater characterization data to evaluate a proposed action during the EISF process, DDOE will be guided by the following principles: the EIS process is designed to identify significant impacts on the environment, not to characterize the site in detail. Therefore, DDOE will seek only the minimum groundwater characterization data necessary to complete its review of the proposed action. DDOE will generally accept "direct push" technology for environmental assessments during the EIS process unless DDOE determines there is a clear need for permanent monitoring technology.

6. Discharges During and After Construction

Under the Clean Water Act, it is unlawful to discharge a pollutant from a point source into navigable waters without first obtaining an NPDES permit. Often, a developer must "dewater" a construction site, and the discharge of this water will usually require an NPDES permit. DDOE is developing guidance for obtaining a NPDES permit for discharging contaminated ground-water to the municipal separate storm sewer system (MS4), since discharges of non-stormwater are prohibited except where such discharges are regulated with a general NPDES permit or an individual NPDES permit. The guidance will describe the requirements for discharging pumped groundwater into the MS4 system. In some cases, these permits will require a developer to treat groundwater before discharging into the MS4 system.

7. Conclusion

This interim directive is intended to bring a strategic focus to protecting groundwater in the District. By developing a comprehensive strategy focused on groundwater, DDOE will be able to develop priority actions related to groundwater protection. As set forth at greater length herein, the District's priorities are to ensure that persons whose activities did not result in the groundwater contamination in the first instance do not worsen a groundwater problem by: a) adding pollutants themselves (either as a result of their construction activities, or as a result of their constructing projects whose post-construction uses will result in the addition of pollutants to groundwater); b) impeding access to an existing groundwater plume; or c) placing sensitive sub-populations at risk from contaminated groundwater.

This Department expects to learn from the implementation of this directive, and to learn from the public about the approaches and strategies described in this interim directive. Therefore, we welcome input, comments, and suggestions on any aspect of this document. If, through our experience implementing this directive, or through comments from the public, we decide to change the strategies in this interim directive, then we will modify this document and re-issue a revised directive.[4]

[4] This document is intended solely as guidance for employees of the District Department of the Environment. The policies and procedures in this guidance do not constitute a rulemaking by DDOE and may not be relied on to create a substantive or procedural right or benefit enforceable at law by any person. DDOE has the right to take action at variance with this guidance.

HEALTH REGULATION AND LICENSING ADMINISTRATION
HEALTH PROFESSIOANL LICENSING ADMINISTRATION

Notice of Regularly Scheduled Public Meetings
Calendar Year 2009-2010

Health Professional Boards Monthly Meetings

FEBRUARY 2009

Board	Day	Date	Time
Nursing	Wednesday	4	8:00 am
Pharmacy	Thursday	5	9:30 am
Respiratory Care	Monday	9	9:00 am
Chiropractic	Tuesday	10	1:00 pm
Social Work	Wednesday	11	9:00 am
Nursing Home Administration	Thursday	12	1:30 pm
Professional Counseling	Friday	13	9:00 am
Physical Therapy	Tuesday	17	3:00 pm
Dentistry	Wednesday	18	10:00 am
Veterinary Examiners	Thursday	19	10:00 am
Massage Therapy	Thursday	19	1:30 pm
Psychology	Friday	20	10:00 am
Audiology & Speech Therapy	Monday	23	9:00 am
Medicine	Wednesday	25	9:00 am

MEETING LOCATION

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

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

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

D.C. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF LEVEL OF ASSISTANCE FOR THE HOME PURCHASE ASSISTANCE PROGRAM

The D.C. Department of Housing and Community Development, pursuant to the authority in Chapter 25, Title 14, DCMR, Section 2503 and Section 2510 of the rules for the Home Purchase Assistance Program (HPAP), hereby gives notice that it has established the income limits and homebuyer assistance for participation of very low income, low income and moderate income households in the HPAP Program.

These income limits have been determined based on the median family income of $99,000 established by the Secretary of the U.S. Department of Housing and Urban Development for 2008, for the Washington Metropolitan Statistical Area. The amounts have been calculated based on Section 2510 of the HPAP Program rules. The First time Homebuyer Assistance Table for Downpayment and Closing Costs reflects a reduction in the level of assistance and shall be effective upon publication of this Notice in the D.C. Register.

The Assistance Table is effective upon publication on January 23, 2009.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (DHCD)

HOME PURCHASE ASSISTANCE PROGRAM (HPAP)

First-Time Homebuyer Assistance Table for Downpayment and Closing Costs
(Effective January 16, 2009)

NOTE:
**** "Desired Purchasing Power," the purchasing power intended to be afforded to income-eligible four-person household = $230,000.**

**** Closing Cost Assistance for all eligible households = upto $4,000.**
Closing Cost Assistance is provided to eligible households distinct from and in addition to Downpayment Assistance, which is shown below.

**** Per Client Downpayment Assistance Cap = $40,000.**

Calculated Maximum Downpayment Assistance Available per Household Income by Household Size is as follows:

Household Size	1	2	3	4	5	6	7	8
Maximum assistance								
	per household income less than or equal to:							
Very low income households								
$ 40,000	$ 34,450	$ 39,350	$ 44,300	$ 49,200	$ 53,150	$ 57,050	$ 61,000	$ 64,950
Low income households								
$ 40,000	$ 43,050	$ 49,200	$ 55,300	$ 61,500	$ 66,400	$ 71,350	$ 76,250	$ 76,250
$ 37,750	$ 43,400	$ 49,600	$ 55,800	$ 62,000	$ 65,900	$ 69,750	$ 73,650	$ 77,500
$ 35,500	$ 44,000	$ 50,400	$ 56,700	$ 63,000	$ 66,950	$ 70,900	$ 74,800	$ 78,750
$ 33,250	$ 44,800	$ 51,200	$ 57,600	$ 64,000	$ 68,000	$ 72,000	$ 76,000	$ 80,000
$ 31,000	$ 45,500	$ 52,000	$ 58,500	$ 65,000	$ 69,050	$ 73,150	$ 77,200	$ 81,250
$ 28,750	$ 46,200	$ 52,800	$ 59,400	$ 66,000	$ 70,150	$ 74,250	$ 78,400	$ 82,500
$ 26,500	$ 46,900	$ 53,600	$ 60,300	$ 67,000	$ 71,250	$ 75,400	$ 79,550	$ 83,750
$ 24,250	$ 47,600	$ 54,400	$ 61,200	$ 68,000	$ 72,250	$ 76,500	$ 80,750	$ 85,000
$ 22,000	$ 48,300	$ 55,200	$ 62,100	$ 69,000	$ 73,300	$ 77,650	$ 81,950	$ 86,250
$ 19,750	$ 49,000	$ 56,000	$ 63,000	$ 70,000	$ 74,400	$ 78,750	$ 83,150	$ 87,500
$ 17,500	$ 49,700	$ 56,800	$ 63,900	$ 71,000	$ 75,450	$ 79,900	$ 84,300	$ 88,750
$ 15,250	$ 50,400	$ 57,600	$ 64,800	$ 72,000	$ 76,500	$ 81,000	$ 85,500	$ 90,000
$ 13,000	$ 51,100	$ 58,400	$ 65,700	$ 73,000	$ 77,550	$ 82,150	$ 86,700	$ 91,250
$ 14,000	$ 52,500	$ 60,000	$ 67,500	$ 75,000	$ 79,700	$ 84,400	$ 89,050	$ 93,750
$ 12,000	$ 53,900	$ 61,600	$ 69,300	$ 77,000	$ 81,800	$ 86,625	$ 91,450	$ 96,250
$ 10,000	$ 55,400	$ 63,400	$ 71,300	$ 79,200	$ 84,150	$ 89,100	$ 94,050	$ 99,000
Moderate income households								
$ 8,000	$ 56,000	$ 64,000	$ 72,000	$ 80,000	$ 85,000	--	--	--
$ 6,000	$ 56,700	$ 64,800	$ 72,900	$ 81,000	$ 86,100	--	--	--
$ 3,200	$ 57,400	$ 65,600	$ 73,800	$ 82,000	$ 87,150	--	--	--
$ 400	$ 58,100	$ 66,400	$ 74,700	$ 83,000	$ 88,200	--	--	--
0*	$ 76,250	$ 87,150	$ 98,000	$ 108,900	$ 115,700	$ 115,700	$ 115,700	$ 115,700

*** Moderate income households in this uppermost range of incomes are eligible for Closing Cost Assistance only.**

Assistance levels are determined for four-person households by calculating standard mortgage qualification levels for each $1,000 of income and subtracting each such mortgage level amount from the "Desired Purchasing Power" (as defined above). Household incomes eligible for assistance for household sizes other than four persons are adjusted as shown.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
NOTICE OF FINAL PROGRAM GUIDELINES

Leila Finucane Edmonds, Director, Department of Housing and Community Development (DHCD) announces the release of the final underwriting guidelines for the First Right Purchase Assistance Program.

Having incorporated the public comments received following publication in the DC Register on October 24, 2008, the new guidelines will be released and effective January 23, 2009.

Please see our website www.dhcd.dc.gov, for the final document.

Underwriting Standards: First Right Purchase Program	
These are the DHCD underwriting guidelines for loans made under the First Right Purchase Program. These guidelines are subject to case by case underwriting analysis. The Department may consider making adjustments to these guidelines based on that analysis, including loan modifications for projects in distress.	
Minimum Upfront Equity	Minimum $500 contribution to the tenants' association by each household commited to live in the building/community.
Max LTV	100% acquisition/90% post-rehab appraised value
DCR	1.10x
Income to Expense Ratio	1.05:1
Pre-sales	If a condo/co-op the substantial majority (50% plus 1) of the existing tenants must sign nonbinding pre-sales agreements. All existing tenants that wish to be accomodated shall be accommodated.
Minimum Release Prices	100% of loan amount per unit adjusted for level of affordability (Condos only)
Maximum Loan Term: Construction	36 Months
Maximum Loan Term: Permanent	Up to 40 years depending on funding source
Amortization	Up to 40 Years. Cash flow loans may be considered on a case-by-case basis.
Maximum Interest Only Period	The earlier of 7 Years or until Debt Service Coverage Ratio reached 1.30x
Interest Rate	Varied: During Construction: 50 basis points up to two percent below the Lead Lender's rate; Permanent: 1% to 9% (per statute)
Funding	100% of DHCD loan proceeds may be advanced ahead of first lien holder proceeds.
Maximum DHCD Loan Amount per Project/Guarantee/Guarantee Shorfall amount	$7,000,000
Maximum Percentage of total development cost subsidized by DHCD	49%
Minimum Number of Affordable Units Per Project:	Min. of 60% of the units up to 80% of AMI. The remaining units will be affordable to no greater than 120% of AMI.
Minimum Reserve Requirements	$400/unit to include Debt Service Reserves
Maximum Developer's Fee Allowable	Up to 10% of total development cost (of which 20% will be disbursed at acquisition, 10% at construction commencement, 20% at 50% completion, 40% at construction completion, 10% at property stabilization)
Other Requirements	See Attachment: "Tenant Purchase Requirements at the time of Application"

Tenant Purchase Requirements at the time of Application to DHCD

1. In the case of a DHCD seed money loan, a property needs assessment must be completed with the loan proceeds. The needs assessment will include the rehabilitation required to meet District Building Codes.
2. Proposed members of the development team must be selected at the time of application for acquisition or construction financing. At minimum, this team must include a development consultant and an attorney committed to the project.
3. For permanent financing, other funding Sources must be identified, evidenced by a Letter of Interest or Term Sheet from an outside lender.
4. In the event that bridge financing is required, application for the DHCD loan shall be submitted simultaneously or earlier than the application for Bridge Financing. Ideally, tenant associations will have already discussed the deal with DHCD to determine if a bridge loan is required due to timeline or other extenuating circumstances.
5. The Tenant Association must be interviewed by DHCD staff.
6. A Statement of Interest from Board of Tenant Association/Tenants must be submitted.
7. Board of Directors' Experience (may require a non owner with asset management experience to be a voting or advisory member of the Board for the first 2-3 years of co-op/condo operations, consistent with condo/cooperative statute).
8. By-Laws and Board Succession Plan required.
9. Tenant Income Survey required. This must, at minimum, include all tenants who have expressed interest in being members of the cooperative or condominium.
10. Certified Membership Statement and Payment of dues, Board minutes, and attendance records must be submitted.
11. Evidence of establishment of bank account by the tenant association.
12. Past two years of annual rent rolls must be submitted.
13. Evidence that all other options have been discussed and explored, including reverting to/remaining under rent control, moving, assignment of rights, conversion to cooperative, or conversion to condominium, and that this is the best solution. Examples of evidence include a board resolution and/or feasibility study.
14. Submission a plan commensurate with the term of District financing for the property which includes financial plan, repayment strategy, management plan, board training plan, refinance plan, capital improvement strategy, marketing strategy, homeowner screening, training and education, rules and regulations.
15. Evidence of community support (ANC letter or other community support letters).
16. An anti-displacement plan must be developed to limit displacement of existing residents. Reasonable efforts should be made to accommodate tenants who wish to participate in the tenant purchase.
17. Property Manager must be acceptable to DHCD at the time of closing.
18. Appraisal of property required by time of closing.
19. The unit must be the owner's primary residence.
20. DHCD requires the utilization of the HUD definition of affordable housing when determining carrying charges for residents in cooperatives earning greater than 30 percent of the area median income (HUD defines affordable housing as up to 30% of monthly income). Exceptions to the 30 percent of income rule may be considered for residents earning less than 30% of AMI. This may result in an increase of tenants' rents/carrying

charges to these limits when asking for DHCD funds. However, carrying charges may not exceed the market rate, regardless of income.

DC STATE BOARD OF EDUCATION

NOTICE OF PUBLIC MEETING

DC State Board of Education

The DC State Board of Education will hold a public meeting to elect the State Board of Education officers.

Should anyone wish to testify before the DC State Board of Education, they should notify the State Board of Education office by close of business January 26, 2009. They should also bring fifteen (15) copies of their testimony to the meeting.

Wednesday, January 28, 2009
5:30 pm
First Floor Chambers
441 4th Street, NW
Washington, DC 20001

Contact: Beverley R. Wheeler (202) 741-0884
Beverley.wheeler@dc.gov

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 17746 of Reed Cooke Neighborhood Association, pursuant to 11 DCMR §§ 3100 and 3101, from a February 22, 2007 decision of the Department of Transportation, Office of Public Works, to grant a curb cut serving accessory parking for an apartment building in the R-5-B District at premises 2351 Champlain Street, N.W. (Square 2563, Lot 109).

HEARING DATES: May 6, 2008 and June 10, 2008
DECISION DATE: June 10, 2008

DISMISSAL ORDER

PRELIMINARY MATTERS

On October 19, 2007, The Reed Cooke Neighborhood Association ("RCNA" or "Appellant") filed this appeal with the Board of Zoning Adjustment ("Board" or "BZA"). RCNA appealed the decision of the Office of Public Works, Public Space Committee, of the D.C. Department of Transportation ("PSC"), to allow a curb cut at 2351 Champlain Street, N.W., within the Reed Cooke Overlay District ("Overlay"). RCNA contended that the curb cut violated the provisions of the Overlay.

The Board heard the appeal on June 10, 2008 and determined that that it had no jurisdiction over the decision appealed. Therefore, after the hearing, the Board voted 3-0-2 to dismiss the appeal.

FINDINGS OF FACT

1. On February 22, 2007, the PSC held a public hearing on the request of Erie Associates, intervenor herein, to permit the expansion of an already-existing curb cut at 2351 Champlain Street, N.W.

2. The curb cut expansion request was addressed to the PSC because the curb cut is located within the area along Champlain Street, N.W. designated as "public space."

3. At the end of the hearing on February 22, 2007, the PSC granted the curb cut request, allowing the expansion of the already-existing curb cut at address 2351 Champlain Street, N.W. to facilitate access to parking accessory to a residential building being constructed by the intervenor.

4. The PSC's action did not permit the creation of off-street parking spaces.

5. The PSC does not make determinations concerning parking on private property; its jurisdiction with regard to parking is limited to ensuring that no off-street parking requirements will be fulfilled by using the public space, unless permitted.

6. The appellate jurisdiction of the BZA is limited to appeals of decisions that arise out of the administration or enforcement of the Zoning Regulations. D.C. Official Code § 6-641.07(g)(1) (2001); 11 DCMR § 3100.2.

7. The subject property, 2351 Champlain Street, N.W., is in an R-5-B zone district and within the Reed-Cooke Overlay District ("Overlay").

8. There is no provision in the Zoning Regulations, including in the Reed-Cooke Overlay provisions, which prohibits curb cuts within the Overlay.

9. There is no provision in the Zoning Regulations, including in the Reed-Cooke Overlay provisions, which prohibits a use from providing more off-street parking spaces then required by the regulations. *See*, 11 DCMR § 2101.2.

10. The purposes of the Overlay set forth in 11 DCMR § 1400 do not include any standards that must be met and are not self-effectuating.

11. There was no request for zoning relief involved in the application before the PSC.

12. The decision of the PSC to permit the curb cut was not based on any Zoning Regulation or any violation thereof.

CONCLUSIONS OF LAW

The Board is authorized to hear appeals of any decision of any administrative officer or body "in the carrying out or enforcement" of any Zoning Regulation. D.C. Official Code § 6-641.07(g)(1) (2001). *See*, 11 DCMR § 3100.2. (The Board may hear appeals of decisions made "in the administration or enforcement of the Zoning Regulations.") Therefore, if an appeal is brought before the Board which does not arise from the carrying out/administration or enforcement of the Zoning Regulations, it is not within the Board's jurisdiction, and the Board is without authority to hear it.

The Appellant and ANC 1C both opposed the curb cut and asserted that the PSC's decision to permit it violated several Zoning Regulations, specifically §§ 1400.2(c) and 1403.1(b), both provisions of the Overlay, and § 2101.1, concerning required parking.[1] The Board, however,

[1]During the hearing, § 1400.2 was also mentioned as a possible basis for the appeal, but this section merely states that where the provisions of the Overlay *conflict* with the underlying zone district, the more restrictive regulations govern. The Board was not directed to any such conflict, and even in the event of

disagrees and fails to find any real nexus between the cited Zoning Regulations and the PSC's decision. Section 1400.2(c) sets forth one of the purposes of the Overlay, *to wit*: "[p]rotect adjacent and nearby residences from damaging traffic, parking, environmental, social, and aesthetic impacts." The purpose set forth in § 1400.2(c) is merely precatory. It is not self-effectuating and does not contain standards by which the curb cut application could have been judged, therefore, it does not create the nexus between the Zoning Regulations and the PSC decision necessary to bring that decision within the jurisdiction of this Board. *See, Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 802 A.2d 359, 365 (D.C. 2002). Section 1403.1(b) is inapplicable here because it is one of several subparagraphs which must be met if one is applying for a special exception from the requirements of the Overlay. There is no request for a special exception here.

The Appellant also cites § 2101.1 of the Zoning Regulations, which sets forth the parking requirement for the intervenor's building, as an ostensible basis for the Board's jurisdiction. The Appellant appears to be arguing that since, without the curb cut, the building already had access to sufficient required parking, granting the curb cut was not proper because it facilitated parking in excess of the amount required. The Zoning Regulations, however, do not mandate parking maxima. On the contrary, § 2101.2 states, in relevant part, that: "[n]othing in this section shall be construed to prohibit the establishment of accessory parking spaces in an amount that exceeds that required by § 2101.1." 11 DCMR § 2101.2. Nor is there any allegation that § 2101, or any other Zoning Regulation, was violated by the granting of the curb cut.

It is clear from the testimony presented at the hearing that the PSC did not make any determination with respect to any Zoning Regulation and that it does not, in the usual course of its business, make any determinations with respect to parking on private property. *See,* June 10, 2008 Public Hearing Transcript at 407, lines 16-22, and at 408, lines 17-22. Such determinations are made by other responsible District agencies, including, where appropriate, this Board.

For all the reasons stated above, the Board concludes that this appeal did not arise out of the administration or enforcement of the Zoning Regulations, and that, therefore, the Board lacks subject matter jurisdiction over the appeal and must dismiss it. *See, Board Order No. 17585 of Darshan Shah,* 55 DCR 1201 ((2008) and cases cited therein. Because the Board lacks subject matter jurisdiction, it does not reach the question of the timeliness of the filing of the appeal.

It is hereby **ORDERED** that this appeal be **DISMISSED.**

VOTE: **3-0-2** (Ruthanne G. Miller, Shane L. Dettman and Mary Oates Walker to dismiss. No fourth member nor Zoning Commission member participating or voting.)

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such a conflict, § 1400.2 is a procedural provision and, like the purposes provisions, does not set forth any standard on which the PSC could have based its decision. Therefore, it does not create the necessary jurisdictional nexus between the Zoning Regulations and the decision appealed.

BZA APPEAL NO. 17746
PAGE NO. 4

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

FINAL DATE OF ORDER: JANUARY 12, 2009

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17778 of Lorraine Purnell, pursuant to 11 DCMR § 3103.2 and § 3104.1, for a variance from the floor area ratio (FAR) requirements under § 402, and for a special exception under § 223, to construct a garage serving a one-family row dwelling not meeting the lot occupancy requirements, in the R-5-A District at premises 222 Emerson Street, N.W. (Square 3323, Lot 12).

HEARING DATE: June 10, 2008
DECISION DATE: July 1, 2008

DECISION AND ORDER

Lorraine Purnell, the owner of the subject property (the applicant), filed an application for zoning relief on January 22, 2008. During a public hearing on June 10, 2008, the Board of Zoning Adjustment (the Board) indicated that the applicant had not adequately addressed the variance test under District law in order to obtain zoning approval for the project. As such, the Board left the record open so that the applicant could either: (a) bring the proposed addition into compliance within allowable FAR limits, obviating the need for a variance; or, (b) establish that the proposed project met the variance test. The applicant indicated she would bring the addition into FAR compliance. While the applicant did revise her plans, she did not bring it into FAR compliance. According to her own calculations, the FAR at the proposed project continued to exceed the allowable FAR limits. As a result, the Board voted to deny the variance and special exception at a decision meeting on July 1, 2008. A full explanation of the facts and law that support the Board's decision follows.

PRELIMINARY MATTERS

The Application The initial application sought special exception relief under § 223 but did not seek variance relief (Exhibit 1). However, the self-certification form filed with the application indicated that the applicant also needed variance relief from the FAR limits applicable to the zone in which the property is located. (Exhibit 2, "Form 135 – Side 2"). The self-certification chart stated that the maximum allowable FAR in the R-5-A zone is "0.9", and that the FAR provided by the proposed construction – "0.95" -- exceeded this amount.

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood Commission (ANC) 4D, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 20).

ANC 4D The subject site is located within the jurisdiction of ANC 4 D, which is automatically a party to this application. However, the ANC neither filed a report nor appeared during the Board proceedings.

Representation The applicant did not appear at the public hearing, but authorized her architect, Mr. Yettekov Wilson, to represent her. (Exhibit 5).

Requests for Party Status There were no requests for party status.

Persons in Support No persons appeared at the public hearing in support of the application. Nor did the Board receive any letters in support of the application.

Persons in Opposition The Board received a letter in opposition from Ms. Robin Robinson, a neighboring property owner residing at 224 Emerson Street, NW (Exhibit 22). Ms. Barbara Willis, another neighboring property owner residing at 220 Emerson Street, NW, appeared during the proceedings and testified in opposition to the application. Ms. Willis testified that, as proposed, the garage would not align with other neighboring properties and would obstruct her view. She also testified that the garage would be acceptable if its depth were reduced by five feet. (T. p. 38).[1]

Government Reports

OP Report OP reviewed the application and prepared a report concluding that the applicant had satisfied the test for a special exception under § 223, but had not satisfied the test for a variance to exceed the maximum permitted FAR. Specifically, OP asserted that the applicant had not established any exceptional condition that would result in a practical difficulty in compliance with the FAR limit. (Exhibit 23) Stephen Rice, the OP representative who prepared the report, testified at the hearing and suggested that the depth of the garage be reduced to bring the proposal into compliance with FAR requirements, thereby removing the need for variance relief. After the Applicant submitted revised plans, OP filed a supplemental report concluding that the revised application did not eliminate the need for variance relief and that the applicant had still not addressed the variance test. (Exhibit 27).

[1] All transcript citations are to the transcript of June 10, 2008, and are hereafter designated "T., p. __".

FINDINGS OF FACT

The Site and Surrounding Area

1. The property is located at 222 Emerson Street, NW, Lot 12, Square 3323 in the R-5-A zone district. It is improved with a one-family row dwelling.

2. The rest of Square 3323 is also developed with row dwellings which have two or two and one-half stories. The abutting row dwellings are practically identical to the subject property.

3. The Square itself is triangular in shape and has a T-formed alley network that links New Hampshire Avenue and 3rd Street from east to west, and Decatur Street to the south. Most of the lots on the Emerson Street side of the Square have a narrow rectangular shape and have similar dimensions. (See Exhibit 6).

The Proposed Project

4. The applicant proposes to construct a detached garage in the rear yard. The original proposal showed a garage width of 16 feet and a depth of 25 feet, and also included a mezzanine space above the garage space.

5. Revised plans submitted by the applicant reduced the garage depth from 25 feet to 21.33 feet. (Exhibit 26). The revised plans did not change the 16 foot width.[2]

The Zoning Relief

6. Without the proposed garage, the lot occupancy at the property is 36%, which conforms to § 403 of the Zoning Regulations.[3] With the proposed construction of the garage, however, the lot occupancy would increase to 59% and would, thus, be non-conforming. (Exhibit 23, OP Report, p. 2 chart). Therefore, the addition would not be permitted as a matter-of-right, but would be permitted as a special exception under § 223 of the Regulations. Accordingly, the applicant seeks relief from this Board under § 223 of the Regulations.

7. The maximum floor area ratio (FAR) allowed in the zone is ".9". 11 DCMR 402.4.[4] Without the proposed garage, the existing FAR at the property is ".72" and, therefore conforms to the Regulations. However, with the garage as originally proposed, the FAR would be ".95" and

[2] The chart in the OP Supplemental Report indicates that the revised garage width would be "reduced" to 19 feet instead of 16 feet. However, the Board believes the "19" is a typographical error, since the width of the entire lot is only 16 feet.
[3] Section 403.2 provides that the maximum lot occupancy in this zone for structures, other than a church or public school, is 40%.
[4] FAR is defined as "a figure that expresses the total gross floor area as a multiple of the area of the lot. This figure is determined by dividing the gross floor area of all buildings on a lot by the area of that lot. 11 DCMR 199.

would, therefore exceed the maximum allowed. (Exhibit 4, Self-Certification Chart and Exhibit 27, Supplemental OP Report). As proposed in the revised plans submitted, the FAR would be ".918" and would still exceed the maximum allowed. (Exhibit 26, Self-Certification Chart and Exhibit 27, Supplemental OP Report).

9. Accordingly, the proposed project also requires relief from the FAR limits of the Regulations. Because FAR relief is not available as a special exception under § 223[5], the applicant must obtain a variance from the FAR requirements.

10. The Applicant presented no evidence that the property was subject to an exception condition and the project architect conceded that there was nothing different about this property compared to other neighboring properties (T., p. 21).

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.

This application must be denied because the applicant has made no showing whatsoever that the variance test has been met. Despite having had ample opportunity to do so, the applicant never submitted anything in writing which even attempted to address the variance test. Nor did the applicant offer any testimony in support of the three-pronged test cited above. In fact, the project architect conceded that the property did not differ from others in the neighbor (Finding of Fact 10). In addition, the survey submitted by the applicant shows that the subject property is similar to other nearby properties, and that most of the lots on the Emerson side of the Square have a narrow rectangular shape and have similar dimensions. (Finding of Fact 3).

It does appear that the applicant attempted to eliminate the need for variance relief. In preparing revised plans, she did significantly reduce the FAR. Unfortunately, she did not reduce it sufficiently to eliminate the need for relief, and the FAR still exceeded what was allowed, albeit by a very small amount. However, no matter how *de minimus* the relief that is requested, the

[5] Section 223 does not provide for relief under § 402, governing FAR requirements.

Board has no authority to waive the FAR requirements. It is true that the Regulations allow for "minor flexibility" in certain situations. For instance, § 2522.1 allows deviations of certain area requirements up to two per cent. However, this provision does not allow deviations from the FAR requirements, only the lot occupancy requirements and requirements relating to minimum areas of lots, courts and roof structures. 11 DCMR 2522.1(a). Thus, notwithstanding the minimal nature of the relief, the variance test must be met.

In reviewing a variance application, the Board is also required under D.C. Official Code § 6-623.04 (2001) to give "great weight" to OP recommendations. As explained above, the Board agrees with OP that the applicant has not adequately addressed the variance test. A similar great weight requirement exists for the written report of an affected Advisory Neighborhood Commission, but, as noted, ANC 4D did not submit a report.

The Board also denies the request for a special exception because the increased lot occupancy was based upon the same plans that depict a structure exceeding matter of right FAR.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application is hereby **DENIED.**

VOTE: 3-0-2 (Ruthanne G. Miller, Shane L. Dettman, and Michael G. Turnbull voting to deny the application; Marc D. Loud being necessarily absent; and Mary Oates Walker not having participated)

Vote taken on July 1, 2008

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

FINAL DATE OF ORDER: JANUARY 15, 2009

UNDER 11 DCMR 3103.1, "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."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17871 of NDC Home Again 22A LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot area requirements under subsection 401.3, to allow the conversion of an existing building from two residential dwelling units to three residential dwelling units in the R-4 District at premises 902 T Street, N.W. (Square 362, Lot 234).

HEARING DATE: January 13, 2009
DECISION DATE: January 13, 2009 (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) 1B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B which is automatically a party to this application. ANC 1B submitted a letter in support of the application. The Office of Planning (OP) submitted a report in opposition to the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2, from the variance requirements of section 401.3. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP and ANC reports, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 401.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

VOTE: **4-0-1** (Marc D. Loud, Ruthanne G. Miller, Mary Oates Walker and Michael G. Turnbull to Approve. Shane L. Dettman, the NCPC representative, not present, 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: January 14, 2009

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.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-10
Z.C. Case No. 08-10
(The Catholic University of America – Further Processing of an Approved Campus Plan for the Construction of a New Residence Hall)
July 7, 2008

Application No. 08-10 of the President and Trustees of the Catholic University of America (the "Applicant"), was filed and approved pursuant to 11 DCMR § 3104 and in accordance with § 210 for special exception approval of an application for further processing of an approved Campus Plan to permit the construction of a new residence hall.

HEARING DATE: July 7, 2008

DECISION DATE: July 7, 2008 (Bench Decision)

SUMMARY ORDER

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

The Commission provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* on May 9, 2008 (55 DCR 5438), and by mail to Advisory Neighborhood Commissions ("ANCs") 5A and 5C and to owners of property within 200 feet of the site. The campus of Catholic University is located within the boundaries of ANC 5A and 5C.

As directed by 11 DCMR § 3035.4, the Commission required the Applicant to satisfy the burden of proving the elements of § 210 of the Zoning Regulations, which are necessary to establish the case for a special exception for a college or university use in a Residence zone district.

The Office of Planning, in a report dated June 20, 2008 that was submitted into the record, concluded that the application was in conformance with the provisions of § 210 and recommended approval of the application as submitted. According to testimony presented by the Applicant and the Office of Planning at the hearing, both ANC 5C and ANC 5A supported the application.

Based upon the record before the Commission, the Commission concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 210 and that the requested relief can be granted in harmony with the general purpose and intent of the Zoning Regulations and Map. The Commission further concludes that granting the requested relief will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map. The Commission gives great weight to the recommendation of the Office of Planning that the application satisfies the requirements of § 210. The Commission is unable to give great weight to the issues and concerns of the affected ANCs, which did not submit a written report in this case.

It is, therefore, **ORDERED** that the further processing application is **GRANTED** subject to the following conditions:

1. The conditions of Zoning Commission Order No. 02-20, the approval of the 2002 Campus Plan, remain in force, as amended and supplemented by the conditions of Zoning Commission Order No. 04-25.

2. The Applicant shall have the flexibility to modify the design of the residence hall wall ends to incorporate additional detailing, materials, and/or color palette.

Pursuant to 11 DCMR § 3100.5, the Commission has determined to waive the requirement of 11 DCMR § 3125.3 that findings of fact and conclusions of law accompany the Order of the Commission. The waiver will not prejudice the rights of any party and is appropriate in this case.

VOTE: 5-0-0 (Anthony J. Hood, Gregory N. Jeffries, Curtis L. Etherly, Jr., Michael G. Turnbull, and Peter G. May to approve).

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

FINAL DATE OF ORDER: _____

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 § 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.

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

PURSUANT TO 11 DCMR § 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 COMMISSION ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE D.C. HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., ("ACT"). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE ACT, THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION THAT IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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4	DCMR	HUMAN RIGHTS (MARCH 1995)	$13.00
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