

**DISTRICT OF COLUMBIA ADVISORY COMMITTEE TO
THE OFFICE OF ADMINISTRATIVE HEARINGS**

PUBLIC NOTICE

**Notice of Regular Quarterly Meetings
in Calendar Year 2009**

The District of Columbia Advisory Committee to the Office of Administrative Hearings (“Committee”) hereby gives notice that the Committee will hold its regular quarterly meetings in Calendar Year 2009 on the dates listed below.

All regular quarterly meetings of the Committee will be held at the offices of Howrey LLP, 1299 Pennsylvania Avenue, NW, Washington, DC 20004-2402.

For further information, please contact Ms. Brenda Cunningham at Howrey LLP, on (202) 383-6664. The dates and times of the regular quarterly meetings of the Committee are as follows:

Friday, June 12, 2009 (9:00 AM)

Friday, September 11, 2009 (9:00 AM)

Friday, December 11, 2009 (9:00 AM)

This schedule is subject to change.

HOWARD ROAD ACADEMY**REQUEST FOR PROPOSALS****Financial Audit Contract**

The Howard Road Academy and its management firm, Mosaica Education, Inc., invite proposals for the provision of financial audit services. Proposals are to be received by Howard Road Academy, 701 Howard Road SE, Washington DC 20020-7101 attention LaTonya Henderson, on **June 22nd** and not later than **2:00 pm**. Bid specifications may be obtained at the school, at www.mosaicaeducation.com, or by contacting Ms. Henderson 202 610-5713. Any questions regarding this bid must be submitted in writing to rgray@mosaicaeducation.com before the RFP deadline.

HOWARD ROAD ACADEMY**REQUEST FOR PROPOSALS****Modular Classroom Contract**

The Howard Road Academy and its management firm, Mosaica Education, Inc., invite proposals for procurement of modular classrooms for 2009-10. Proposals are to be received by Howard Road Academy, 701 Howard Road SE, Washington DC 20020-7101 attention LaTonya Henderson, on **June 22nd** and not later than **2:00 pm**. Bid specifications may be obtained at the school, at www.mosaicaeducation.com, or by contacting Ms. Henderson 202 610-5713. Any questions regarding this bid must be submitted in writing to LHenderson@howardroadacademy.org before the RFP deadline.

KIPP DC
REQUEST FOR PROPOSALS

KIPP DC, 910 17th Street, NW, Washington, DC 20006, will receive bids until **June 4, 2009 at 5:00 p.m.** for the following services:

Janitorial Services work needed across three charter school campuses. Proposals are due on June 4, 2009. A full RFP may be obtained by contacting Alex Shawe at ashawe@kipfdc.org or at 202-223-4505.

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

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

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

Comments on these appointments should be submitted, in writing, to Naomi Shelton, Administrator, Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on June 5, 2009. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

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Appointments of Notaries PublicEffective: June 15, 2009
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Abarca	Sharon R.	Hogan & Hartson 555 13th Street, NW	20004
Alandy	Jennifer R.	Washington Pre-Trial Services, Inc. 4626 Wisconsin Avenue, NW, #300	20016
Arango	Claudia	Environmental Working Group 1436 U Street, NW, Suite 100	20009
Aremu	Taiwo G.	Self 113 Trenton Place, SE	20032
Belayneh	Michal Humes	Venable LLP 575 7th Street, NW	20004
Bender	Cheryl L.	Joseph, Reiner & Wiernicki 1025 Connecticut Avenue, NW, Suite 712	20036
Better	Celeste E.	American Lung Association 1301 Pennsylvania Avenue, NW, Suite 800	20004
Bonner-Evans	Arnita	Office of Unified Communications 2720 Martin Luther King Junior Avenue, SE	20032
Brokenborough	Keith	Citibank, N.A. 5001 Wisconsin Avenue, NW	20016
Bukowski	Linda L.	Alderson Court Reporting 1155 Connecticut Avenue, NW, Suite 200	20036
Bundy	Marcia	One Campaign 1400 I Street, NW, Suite 600	20005
Bunner	Michael R.	Metropolitan Police Department 300 Indiana Avenue, NW, Room 3124	20001
Burns	DeJuan A.	Essentials Salon & Spa 2916 Martin Luther King Jr. Avenue, SE	20032
Butler	Maureen	The Coverage Law Firm, PLLC 1629 K Street, NW, Suite 802	20006

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Cain	Joan V.	LAD Reporting Company, Incorporated 1325 G Street, NW, Suite 200	20005
Callen	Brian J.	Metropolitan Police Department 300 Indiana Avenue, NW, Room 5028	20001
Chace	Linda	Potomac Elevator Company 5125 MacArthur Boulevard, NW, #41	20001
Cherie	Valesay P.	Howard University Hospital 2041 Georgia Avenue, NW	20060
Cheung	Kathy C.	Y & C International LTD 740 6th Street NW, Suite 401	20001
Chichester	Melba	Center for Constitutional Litigation 777 6th Street, NW, Suite 520	20001
Choi	Chang H.	The UPS Store 2100 M Street, NW, Suite 170	20037
Claiborne	Carolyn E.	Self 3722 24th Street, NE	20018
Coffer	Robin M.	Self 638 Jefferson Street, NE	20011
Cook	William C.	Classic Concierge 1015 15th Street, NW	20005
Coughlin	Thomas A.	Law Offices of Thomas A. Coughlin 1776 K Street, NW, Suite 700	20006
Crawford	Cameron D.	Same Day Process Service 1322 Maryland Avenue, NE	20002
Davis, Jr.	Steven G.	One Campaign 1400 I Street, NW, Suite 600	20005
Diombokho	Angelina Wyckoff	First Book 1319 F Street, NW, Suite 1000	20004

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DuPuis	Donald J.	United States Navy Memorial Foundation 701 Pennsylvania Avenue, NW, Suite 123	20004
Evans	Constance M.	Asbury Dwellings 1616 Marion Street, NW	20001
Evans	Toni M.	O'Melveny & Myers LLP 1625 Eye Street, NW	20006
Felter	David S.	Capitol Process Services, Inc. 1827 18th Street, NW	20009
Gonzalez	Diana	Rosemount Center 2000 Rosemount Avenue, NW	20010
Grasso	Michelle K.	JP Morgan Chase 601 Pennsylvania Avenue, NW, Suite 250N	20005
Green	Maria Christina	Self 741 Princeton Place, NW	20010
Grim	Tara Reen	Kellogg, Huber, Hansen, Todd, Evans & Figel PLLC 1615 M Street, NW, Suite 400	20036
Grimmett	Pamela L.	PNC Bank 1400 K Street, NW	20005
Hansel	Renee P.	Navy Federal Credit Union 9th & M Street, SE, NFCU Building 218	20374
Harllee Harper	Linda K.	Department of Youth Rehabilitation Services 450 H Street, NW, 6th Floor	20001
Hayes	Jessica Lynn	American University- Clinical Programs 4801 Massachusetts Avenue, NW	20016
Hoffman	Michael T.	Wachovia Bank, NA 3700 Calvert Street, NW	20007

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Holliday	Levi L.	DC Courts 616 H Street, NW	20001
Jackson	Evette	Department of Youth Rehabilitation Services 1000 Mount Olivet Road, NW	20002
Johnson	Angeline M.	Williams & Connolly, LLP 725 12th Street, NW	20005
Johnson	Denise Marie	Self 2244 Shannon Place, SE	20020
Jones	Cleopatra	Self 40 R Street, NE	20002
Jones	Ronald L.	Wheeler Creek CDC 1130 Varney Street, SE	20036
Kave	Mary K.	Blake Real Estate, Incorporated 1150 Connecticut Avenue, NW, Suite 801	20036
Kencanasari	Dinna	Washington Consular Services, Inc. 4625 MacArthur Boulevard, NW, #B	20007
Koplo	Stephen J.	SK Consulting 4317 Fessenden Street, NW	20016
Laurenti	Kris B.	Department of Youth Rehabilitation Services 450 H Street, NW, 10th Floor	20001
Lewis	Wayne	Griffin & Murphy LLP 1912 Sunderland Street, NW	20036
Marquez	Juana I.	CARECEN 1460 Columbia Road, NW, C-1	20009
Mason	Tina L.	Fedchoice Federal Credit Union 99 New York Avenue, NE	20002
Massey	Shirley T.	Department of Motor Vehicles 301 C Street, NW	20001

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McLennon	Bridget	Department of Youth Rehabilitation Services 1000 Mount Olivet Road, NW	20002
Meas	Saphira	Thompson, Loss & Judge, LLP 1133 21st Street, NW, #450, Washington, DC	20036
Mesfen	Michael	Eritrean Community Development Services 621 P Street, NW, Apt.#1	20001
Otey	Jania	Otey Law Office 3609 Georgia Avenue, NW, Suite 200	20010
Owona	Antoine	Chevy Chase Bank 4000 Wisconsin Avenue, NW	20016
Phillips	Mary	Department of Youth Rehabilitation Services 450 H Street, NW, 10th Floor	20001
Reyes	Maria	McDaniel & Associates, PA 1211 Connecticut Avenue, NW, Suite 506	20036
Roberts	Sarah J.	Wellspring Advisors, LLC 1090 Vermont Avenue, NW, Suite 1200	20005
Robertson	LaTonya	Distict Title Corporation 1707 L Street, NW, Suite 1020	20036
Royster	Shirley L.	Valley Vista Condominiums Unit Owners Association 2032 Belmont Road, NW	20009
Satterwhite	Darryl	Good Hope Institute 1320 Good Hope Road, SE	20020
Sepulveda	Jocelyn	Griffin & Murphy LLP 1912 Sunderland Street, NW	20036
Shepherd	Jeanette Louise	U.S. EPA 1200 Pennsylvania Avenue, NW, MC6202J	20460
Sim	Eugene	The Estate Planning & Elder Law Firm, PC 4525 Klinger Street, NW	20016

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Stanback	Berlinda Dorothy	District of Columbia Board of Elections 441 4th Street, NW, Suite 270N	20001
Struyk	Robin J.	PNC Financial Services Group, Incorporated 1100 25th Street, NW	20037
Tan	Yibing	The Brookings Institution 1775 Massachusetts Avenue, NW	20036
Tate, Sr.	Geoffrey E.	CRELOBA Counseling Services, Incorporated 761B Quebec Place, NW	20010
Thacker	Erick M.	Capital Reporting Company 1821 Jefferson Place, NW, 3rd Floor	20036
Thompson	Shirley D.	US Department of Justice 950 Pennsylvania Avenue, NW	20530
Tremble	Deborah L.	Branch Banking and Trust Company (BB&T) 1909 K Street, NW, 2nd Floor	20006
Urbina	Maria E.	Bracewell & Giuliani, LLP 2000 K Street, NW, Suite 500	20006
Ware	Marcus L.	Transportation Federal Credit Union 800 Independence Avenue, SW	20591
Washington	Margaret J.	Bethlehem Church of God Holiness 5898 Eastern Avenue, NE	20011
Washington	Pamela M.	US Department of Justice, Criminal Division, Fraud Section 10th & Constitution Avenue, NW, Bond Bldg., Room 4216	20530
Watkins	Sherri L.	Bright Beginnings, Incorporated 128 M Street, NW	20001
Watson	Matthew S.	Law Offices of Matthew S. Watson 2301 N Street, NW, Suite 116	20037

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Wheat	Tim M.	Self 2134 12th Place, NW	20009
Williams	Patrice	Fedchoice Federal Credit Union 99 New York Avenue, NE	20002
Williams	Theresa B.	Larry C. Williams & Williams 1100 G Street, NW, Suite 1050	20005
Wilson	Shaquita	The Employment Law Group, P.C. 888 17th Street, NW	20006
Wine, II	Donald	Project Vote 739 8th Street, SE, Suite 202	20003
Wise	Linda Marie	Alstom Power Inc 801 Pennsylvania Avenue, NW	20004
Wolff	Meaghan F.	International Brotherhood of Teamsters 25 Louisiana Avenue, NW	20001
Workman	Odessa	Self PO Box 77143	20013
Zimolong	Jamie	United Union of Roofers, Waterproofers and Allied Workers 1660 L Street, NW, Suite 800	20036

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY

Business Improvement District (BID) Litter Cleanup Assistance Program

(Continuation of Services Authorized in 2008)

The Department of Small and Local Business Development (DSLBD) is soliciting applications for the Business Improvement District (BID) Litter Cleanup Assistance Program. The associated grant is intended to support the continued operation of clean team services authorized through the launch of the BID Litter Cleanup Assistance Program in 2008. **Eligible non-profits comprise Adams Morgan Partnership BID, Barracks Row Main Street, Historic Dupont Circle Main Streets, H Street Main Street, Shaw Main Streets, and Mount Vernon Triangle CID**, which currently manage clean team services for their designated commercial corridors.

The Business Improvement District (BID) Litter Cleanup Assistance Program is defined in the Business Improvement District (BID) Litter Cleanup Assistance Fund Establishment Act of 2007 authorized under the Budget Support Act Resolution, Subtitle J, Section 6091. The \$600,000 funding is allocated through the Department of Public Works (DPW) fiscal year 2009 budget. The BID Litter Cleanup Assistance Program is designed to provide grants to enhance the litter clean-up effort of qualified corporations, and help create healthy, vibrant, and safe commercial corridors. This Program aims to complement existing DPW trash collecting and recycling, street cleaning, and graffiti removal services.

As established in the BID Litter Cleanup Assistance Program, "qualified corporation" means: a) A "BID corporation," as that term is defined in section 3(4) of the Business Improvement Districts Act of 1996, effective May 29, 1996 (D.C. Law 11-134; D.C. Official Code § 2-1215.02(4), that has an annual budget of less than \$1 million; or b) A Main Street organization duly incorporated with a current letter of agreement with the Department of Small and Local Business Development. Through this solicitation, the Program will provide seed funding for the permanent establishment of locally operated and financially sustained clean teams in the eligible commercial corridors.

Applications will be released and available on the DSLBD website (www.dslbd.dc.gov) beginning June 5, 2009. Organizations may also pick-up the application at the Department of Small and Local Business Development, 441 4th Street, NW, Suite 970N, Washington, DC 20001, or contact the Department at (202) 727-3900. Applications shall be submitted to the Office of Commercial Revitalization, Department of Small and Local Business Development, 441 4th Street, NW, Suite 970N, Washington, DC 20001, by 4:00 PM on Tuesday, June 30, 2009. An application is considered complete if all questions are answered in the allotted space, all signatures are affixed, all requested attachments are included, and the original UNBOUND application and six (6) copies are submitted by the deadline.

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

DC STATE BOARD OF EDUCATION
NOTICE OF APPLICATION AVAILABILITY

Student Representative Recruitment

Tuesday, May 26, 2009 the DC State Board of Education begins its recruitment efforts to fill two Student Representative slots.

Copies of the application and manual available on the DC State Board of Education website at:
www.sboe.dc.gov.

Applications and manuals will be distributed to local schools, through community organizations, through the Office of the State Superintendent of Education, and may be picked up at the DC State Board of Education office at 441 4th St. NW STE 723N Washington, D.C. 20001.

Applicants who wish to submit via email may do so at sboe@dc.gov or hard copy to the address listed above. All applications must be received in the office of the State Board of Education by close of business Friday, July 10, 2009.

For additional information please contact Sean Greene at 202-741-0887.

**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
NOTICE OF FUNDING AVAILABILITY**

FY 2009 Public Facilities Financing Grant

RFA RELEASE DATE: May 22, 2009

APPLICATION SUBMISSION DEADLINE: June 12, 2009

The Office of the State Superintendent of Education is soliciting grant proposals from qualified applicants for the FY 2009 Public Facilities Financing Grant. Through this RFA, the OPCSFS is soliciting proposals for funding projects that:

- Revitalize District owned buildings leased to Public Charter Schools or District based non-profit entities that work with public charter schools;
- Ensure that District of Columbia public charter school students and families are provided with suitable learning environments to support academic success;
- Expand quality early childhood education and high school options, especially for low-income students;
- Invest public resources in neighborhoods in greatest need for quality educational facilities and with the greatest hope of attracting and retaining residents.

Mandatory Pre-Application Conference

WHEN: Tuesday June 2, 2009

WHERE: City-Wide Conference Center
441 4th Street, NW, Room 1114
Washington, DC 20001

TIME: 2:00 - 4:00pm

CONTACT PERSON: Zita Rostás
Office of the State Superintendent of Education
Government for the District of Columbia
441 4th Street, N.W., Suite 350N
Washington, D.C. 20001
Tele: 202-535-2651
Fax: 202-727-2019
zita.rostas@dc.gov

Please visit www.osse.dc.gov or contact Zita Rostás to receive a copy of the RFA.

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

Application No 17860-A of Jemal's KFC, LLC, pursuant to 11 DCMR § 3101.2, for a variance from floor area ratio requirements under section 771, a variance from the rear yard requirements under section 774, and a variance from the parking requirements under subsection 2101.1, to permit the development of a two-story commercial building in the C-2-A District at premises 1442 Pennsylvania Avenue, S.E. (Square 1065-NE, Lot 49).

HEARING DATE: January 6, 2009

DECISION DATE: January 6, 2009

**DATE OF ISSUANCE
OF ORDER:** January 8, 2009

**DATE OF DECISION
ON RECONSIDERATION:** March 3, 2009

ORDER DENYING RECONSIDERATION

Background

By letter dated January 21, and filed with the Office of Zoning on January 26, 2009, Advisory Neighborhood Commission ("ANC") 6B, the ANC within which the subject property is located, and a party to the case, moved for reconsideration of the Board of Zoning Adjustment's ("BZA" or "Board") January 8, 2009 order in this case.

During the proceedings in this case, the ANC submitted a letter to the Board dated December 10, 2008 stating that the ANC's decision to support the application was "conditioned on the attachment of items 1 through 5 of the Neighbors' MOU" with the Applicant. Exhibit No. 21. (*See also*, Exhibit No. 22, ANC letter of December 18, 2008). The Board was therefore aware that the ANC wanted the Board to include "items 1 through 5" as conditions in its order.¹

¹Items one through five read as follows:

1. The following uses, even though permitted within the C-2-A District as a matter of right or with special exception approval by the BZA, will not be permitted on the Subject Property: a liquor store, the sale of any pornographic material, a check-cashing establishment, a pawnbroker, a night club, and a convenience store such as 7-eleven; provided, however, that a drug store such as CVS or Walgreens shall be permitted. Furthermore, a wine and cheese shop or other similar use shall be permitted.
2. The Subject Property will be developed substantially in accordance with the architectural plans and elevations dated July 11, 2008 and attached hereto as Exhibit A.

**BZA APPLICATION NO. 17860-A
PAGE NO. 2**

The Board, in its January 8, 2009 summary order, did not include the requested items one through five. Instead, the order stated that these matters “are not relevant to the variance relief requested ... and ... that the ANC did not intend its support of the application to be contingent upon” their inclusion in the Board’s order. Board Order No. 17860, *Jemal’s KFC, LLC* (January 8, 2009), at 2. Therefore, ANC 6B moved for reconsideration and requested that the Board “agree to require that the terms of the MOU be attached to the variance.” Exhibit No. 35, letter requesting reconsideration.

At its public meeting on March 3, 2009, the Board addressed the ANC’s request for reconsideration, and denied it.

Discussion

During the hearing, and again at the conclusion of the hearing, in the deliberations on the application, the Board gave great weight to the requested items/conditions one through five by considering them seriatim. As to proffered items/conditions one and three, the Board found that there was no evidence of adverse impact which these conditions would mitigate. Hearing Transcript of January 6, 2009 (“Trans.”), at 165, lines 10-22 and 166, lines 1-10; and 167-169. Further, for item three, the Board also found that the proffered condition had nothing to do with the variance relief that was granted. Trans. at 168, lines 1-5. Item number two is duplicative of the regulation found at 11 DCMR § 3125.7. Trans. at 166, lines 11-22 and 167, lines 1-7. Item four, relating to construction activities, is not within the Board’s jurisdiction. Trans. at 124, lines 12-17 and 169, lines 9-11. The Board found that item number five was vague and would be difficult to enforce. Trans. at 125, lines 21-22 and 126, lines 1-20.

The Board determined that the proposed conditions were either not within the Board’s jurisdiction, not supported by substantial evidence in the record, not related to the specific relief sought, or unnecessary because already required by the Zoning Regulations. Based on these determinations, the Board did not include items one through five in its order. Nothing has occurred to undermine the Board’s determinations, and the Board declines to reconsider its decision not to include items one through five in its order.

The ANC claims, in its request for reconsideration, that if the MOU “is to endure, it is important that the variance be qualified by inclusion of terms of the MOU.” Exhibit No. 35. This is not

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3. Douglas, its tenants, and contractors will not use the loading berth on the Subject Property between the hours of 8:00 p.m. and 7:00 a.m. on Monday through Saturday. Douglas, its tenants, and contractors may use the loading berth only between the hours of 9:00 a.m. and 1:00 p.m. on Sunday.
 4. Douglas and its contractors will not engage in any construction activities, other than emergency repairs, between the hours of 8:00 p.m. and 7:00 a.m. from Monday through Saturday. Douglas and its contractors will not engage in any construction work other than repairs, on Sunday.
 5. Douglas, or its tenants, will promptly remove all trash and debris from the public space located between the property line and the adjacent curb.

**BZA APPLICATION NO. 17860-A
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true. The Board's order and the MOU between the ANC and the Applicant are separate legal documents, separately enforceable through different enforcement mechanisms. Items one through five are included in the MOU and can be enforced in the context of the MOU, whether or not they are included in the Board's order. Going to this point, the Board also found credible the Applicant's claim that it would comply with the conditions of the MOU.

Moreover, 11 DCMR § 3126.4 states that a motion for reconsideration must set forth the respects in which the decision is claimed to be erroneous, the grounds of the motion, and the relief sought. The ANC's motion does not claim that the Board's decision to grant the variance relief is erroneous in any way nor does it request that the Board reconsider this decision. The only relief sought by the ANC is inclusion of items one through five as conditions in the order, which, as explained above, the Board is unable to grant.

The Board recognizes that the neighbors "invested considerable time and energy in arriving at the terms of the MOU with the applicant," but this cannot compel inclusion of those terms in the Board's order. The ANC desires only that the mandates in items one through five be complied with, which it appears will occur, and is separately enforceable if it does not occur. Therefore, even without inclusion of items one through five in the Board's order, the ANC is in the position in which it desires to be.

For all the above reasons, it is hereby **ORDERED** that ANC 6B's request for reconsideration is **DENIED**.

VOTE: **3-0-2** (Ruthanne G. Miller, Gregory N. Jeffries, and Mary Oates Walker to deny; two members not present, not participating.)

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

A majority of Board members approved issuance of this Order.

FINAL DATE OF ORDER: **MAY 28, 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.

LM

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

Application No. 17870 of Koo Yuen, pursuant to 11 DCMR § 3104.1, for a special exception to establish a gasoline service station under sections 726 and 706, in the C-2-A District at premises 3710 Minnesota Avenue, N.E. (Square 5046, Lot 810).

HEARING DATES: December 9, 2008, March 24, 2009, April 27, 2009, May 19, 2009

DECISION DATE: May 19, 2009

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief. (Exhibit 3).

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 the Applicant, Advisory Neighborhood Commission (ANC) 7A, and to all owners of property within 200 feet of the property that is the subject of this application. The subject property is located within the jurisdiction of ANC 7A, which is automatically a party to this application. ANC 7A did not file a report regarding the application. The Office of Planning (OP) submitted three reports either recommending denial of the application or indicating that they could not recommend approval of the application, primarily because of the District Department of Transportation's (DDOT) concerns that DDOT initially raised. (Exhibits 20, 32, 34). However, in its testimony at the final hearing on May 19, 2009, OP testified that it rescinded its previous reports and recommended approval of the application with conditions, based on the last set of revised plans submitted and DDOT's supplemental report in which it recommended conditional support. Likewise, DDOT initially had expressed reservations about the application and recommended denial of it (Exhibit 33), but ultimately recommended conditional support in its supplemental report, dated May 19, 2009, and in its testimony before the Board on May 19, 2009. (Exhibit 38). A witness in support gave testimony on May 19, 2009. Several petitions in opposition were received.¹ (Exhibits 19, 22, 23, 29).

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR §§ 3104.1 706, and 726. No parties appeared at the

¹ The Board noted that although petitions in opposition were received, the petitions did not indicate any reason for the opposition or describe an adverse impact that would arise if the application was granted.

BZA APPLICATION NO. 17870**PAGE NO. 2**

public hearing in opposition to the application.² Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the OP report filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3104.1 for a special exception under §§ 706 and 726, and 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 requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case. It is therefore **ORDERED** that the application (pursuant to Exhibit 37 – REVISED PLANS) be **GRANTED AS CONDITIONED**:

1. Deliveries of gasoline shall not be made to the site between the hours of 7:00 a.m. and 7:00 p.m.
2. Deliveries to the site shall be restricted to delivery trucks that are no longer than 30 feet and with a capacity of no more than 5,000 gallons.

VOTE: **3-0-2** (Shane L. Dettman, Marc D. Loud, and Michael G. Turnbull to approve; no other members present or voting)

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

A majority of Board members approved issuance of this order.

FINAL DATE OF ORDER: MAY 26, 2009

UNDER 11 DCMR § 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL BECOME EFFECTIVE 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

² As indicated, although initially both DDOT and OP recommended denial of the application, ultimately both agencies filed reports and testified in support of the application with conditions.

BZA APPLICATION NO. 17870

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PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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

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

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

Application No. 17874 of Yebeltal Kebede, pursuant to 11 DCMR § 3101.2, for a variance from the use provisions to establish a retail grocery store (basement only)¹ under subsection 330.5, in the R-4 district, at premises 1403 6th Street, N.W. (Square 479, Lot 28).

HEARING DATE: January 27, 2009

DECISION DATE: March 3, 2009

DECISION AND ORDER

This application was submitted on September 2, 2008 by Yebeltal Kebede (“Applicant”), the owner of the property that is the subject of this application (“subject property”). The Applicant applied to the Department of Consumer and Regulatory Affairs (“DCRA”) for a certificate of occupancy to operate a “retail grocery store” at the subject property, which was denied because new grocery stores are not permitted in any residence zone. The applicant did not appeal that decision, but instead filed this application for a use variance to establish a retail grocery store in an R-4 zone district.

The Board held a public hearing on the application on January 27, 2009. At the conclusion of the hearing, the Board kept the record open to receive further information and scheduled a decision for March 3, 2009. On that date, the Board decided to deny the application by a vote of 5-0-0.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated September 4, 2008, the Office of Zoning (“OZ”) sent 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”) 2C, the ANC within which the subject property is located, the member for Single Member District 2C02, and the Councilmember for Ward 2. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register* and mailed such notice to the Applicant, ANC 2C, and all owners of property within 200 feet of the subject property.

Requests for Party Status. ANC 2C was automatically a party to the application. There were no requests for party status.

Applicant’s Case. The Applicant and his attorney discussed his personal situation, the need to re-locate his current grocery business, and how, in their opinion, the application meets the use variance test.

¹As originally advertised, the application requested grocery store use in the basement and first floor, but during the proceedings on the application, the request was changed to encompass only the basement.

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Government Reports. The Office of Planning filed a report with the Board on January 16, 2009 recommending denial of the application. OP opined that the application failed to meet any of the three prongs of the use variance test.

No other government reports were filed.

ANC Report. ANC 2C filed a report with the Board on October 14, 2008 stating that at a properly-noticed, regularly-scheduled meeting with a quorum present, the ANC had voted to support the application. Other than stating that the Applicant spoke in favor of his application at the ANC meeting, the ANC letter did not present any analysis or explanation of why the ANC recommended approval of the application.

Persons in Support or Opposition. The Board received one letter in opposition to the application and eight letters in support, as well as a petition in support with approximately 60 signatures. Four neighbors also testified in support of the application. The single letter in opposition objects to the Applicant's store's sale of alcoholic beverages and states that gang members "frequent the store's present location." Exhibit No. 21. The letters and testimony in support emphasize the convenience of the Applicant's store and how this would be lost if the application were denied, particularly negatively impacting the many seniors in the neighborhood.

FINDINGS OF FACT

The subject property and the background of the application.

1. The subject property is located at address 1403 6th Street, N.W., in an R-4 zone district.
2. The property fronts on 6th Street, N.W., and is located one building from the northeast corner of 6th and O Streets, N.W. A new grocery store is not a permitted use in this R-4 zone (11 DCMR § 330.5); therefore, a use variance is required.
3. On the property is a 2-story plus basement row dwelling with exterior stairs leading down to a front entrance to the basement.
4. There is no alley access to the rear of the property.
5. Immediately adjacent to the subject property, at the corner of 6th and O Streets, is another building which shares a party wall with the Applicant's dwelling. On the first floor of this attached building is a retail grocery store operated by the Applicant.
6. The address of the attached building containing the Applicant's grocery store is 1401 6th Street, N.W. It is also in the R-4 district.

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7. The Applicant does not own the building at 1401 6th Street, but leases the first floor for his grocery establishment.
8. The grocery store was lawfully established prior to the change in zoning. As such it is a nonconforming use pursuant to the definition of that term at 11 DCMR § 199.1.
9. The building containing the grocery store is configured for retail use on the first floor. It has a large, commercial-type window that wraps around the corner.
10. The building containing the grocery store is a larger building than the Applicant's dwelling.
11. The Applicant's lease will end in the spring of 2009 and will not be renewed, therefore, after the lease terminates, his grocery store will no longer be able to operate from the building at 1401 6th Street.
12. The grocery operates from 9:00 a.m. to 10:00 p.m. seven days a week and serves the local neighborhood, many of whose residents are senior citizens on fixed incomes and/or without access to vehicles.
13. The next-closest grocery store is a Giant store approximately two blocks from the subject property.
14. The Applicant proposes to re-locate his grocery store from 1401 6th Street to the subject property (1403) and establish it in his basement, continuing to use the rest of the subject property for residential use.
15. The nonconforming grocery store at 1401 6th Street cannot be re-located, or even extended into other portions of its existing building, without zoning relief. 11 DCMR § 2002.3.

The use variance*No exceptional condition*

16. The property is a regularly-shaped rectangle with a length on both sides of 62.25 feet, and a uniform width of 21.75 feet, for a total area of approximately 1,354 square feet.
17. The subject row dwelling is currently being used as a flat. It is owned by the Applicant, who resides there with his family.
18. A flat is a matter-of-right use in this R-4 zone district.

No undue hardship

19. There was no evidence that residential use could not continue at the subject property. Therefore, the subject row dwelling can continue to be used as a flat or as a one-family

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dwelling, both of which are permitted uses in this R-4 zone.

There would be a substantial detriment to the zone plan.

20. The “primary purpose” of R-4 zone districts is “the stabilization of remaining one-family dwellings.” 11 DCMR § 330.2. See also, Zoning Commission Order No. 06-47 (2007), at 2, where this purpose was recently repeated and re-emphasized.

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. 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) (2001), 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).

Because the Applicant in this instance “seeks a use ordinarily prohibited in the particular district,” the request is considered one for a use variance. *Id* The Applicant was therefore required to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in an “undue hardship” to him. 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 determined that “undue hardship” only exists “where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations.” *Palmer*, 287 A.2d at 542. *Accord.*, *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.”)

This Applicant did not meet his burden as to any prong of the use variance test.

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As to the first prong, neither the property nor the dwelling on the property is beset with any exceptional conditions or unusual circumstances. The property is a regular rectangle with no topographical issues.

Nor will compliance with the use regulations for an R-4 District result in an undue hardship upon the Applicant. The row dwelling is currently used for residential purposes, which can be continued indefinitely. The only “hardship” exhibited by the Applicant is the loss of his lease in the building next door to the property. Although the Board appreciates his plight, personal hardships do not satisfy the use variance test. *See*, 3 Rathkopf, *The Law of Zoning and Planning*, § 58:20 (2006) (“Hardship must relate to some characteristic of the land for which the variance is requested, and must not be solely based on the needs of the owner. ... Personal considerations, therefore, are not sufficient grounds on which to base a variance.”) *Cf. Draude v. D.C. Bd. of Zoning Adjustment*, 527 A.2d 1242, 1255 (D.C. 1987) (In reference to the first prong of the variance test, the court says that the exceptional condition is “not merely ... unusual circumstances personal to the owner and related to the property only in the sense that the owner’s personal situation makes it difficult to develop the land consistently with the zoning regulations.”)

The Applicant also argues that the location of the property in a neighborhood with many senior citizens creates the necessary exceptional condition and that the loss of the grocery store will cause an undue hardship to those citizens. Under the use variance test, however, the undue hardship must be incurred by the owner of the property in question and that property itself – not the surrounding neighborhood – must exhibit the required exceptional condition. Further, the presence of seniors in a neighborhood is not exceptional, and, even if it were, neighborhood demographics could change at any time.

Granting a use variance and allowing the Applicant to establish his grocery store at the subject property would impair the purpose and integrity of the R-4 zone district in which it is located. The primary purpose of the R-4 zone district is the stabilization of remaining one-family dwellings (*See*, Finding of Fact No. 21) and a newly-established commercial use within an otherwise completely residentially-used line of row dwellings would undermine this purpose.

A use variance requires a high threshold of proof because it is a relatively drastic type of relief. Granting a use variance could have serious effects on a neighborhood and the requisite tests must be met. The Applicant’s situation is unfortunate. The Board sympathizes with him, but must operate within the confines of the regulations; and under the facts of this case, the variance test is simply not met.

Great Weight

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

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two entities and an explanation of why the Board did or did not find their views persuasive. The Office of Planning recommended denial of the application, finding none of the prongs of the use variance test to be met. The Board agrees with this assessment.

ANC 2C recommended approval of the application, but did not engage in any zoning analysis nor discuss any aspect of the use variance test. The Board recognizes that the corner store is a convenience to the neighborhood, but cannot find that any of the prongs of the use variance test are met. Therefore, it disagrees with the ANC's recommendation.

For all of the reasons set forth above, the Board concludes that the Applicant has failed to satisfy the burden of proof with respect to an application for a use variance from § 330.5, pursuant to § 3103.2. Accordingly, it is **ORDERED** that the application is **DENIED**.

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

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

A majority of Board members has approved the issuance of this order.

FINAL DATE OF ORDER: MAY 27, 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. 17896 of Washington Ethical Society, pursuant to 11 DCMR § 3104.1, for a special exception to allow a child development center (40 children and 14 staff) under section 205, in the R-1-B district at premises 7750 16th Street, N.W. (Square 2745F, Lot 81).

HEARING DATE: Tuesday, March 17, 2009

DECISION DATE: Tuesday, March 17, 2009

DECISION AND ORDER

This self-certified application was filed on October 3, 2008 by the Washington Ethical Society (“WES”), the owner of the property that is the subject of this application, together with Wonders Child Care Center, the entity that will operate the proposed child development center (collectively, the “Applicant”). As finally amended, the application requested a special exception under § 205 of the Zoning Regulations (Title 11 DCMR) to establish a child development center for 40 children and 14 staff. Following a public hearing, the Board voted on March 17, 2009 to approve this application subject to the conditions listed herein.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated October 7, 2008, the Office of Zoning provided notice of the application to the Office of Planning, the District Department of Transportation; the Office of the State Superintendent of Education; the Councilmember for Ward 4; Advisory Neighborhood Commission (“ANC”) 4A, the ANC within which the subject property is located; and Single Member District/ANC 4A02. Pursuant to 11 DCMR § 3113.13, on January 6, 2009, the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Applicant, ANC 4A, and owners of property within 200 feet of the subject property. Notice of the hearing date, March 17, 2009, was published in the *D.C. Register* on January 9, 2009 (56 DCR 261).

Party Status. In addition to the Applicant, ANC 4A was automatically a party in this proceeding. At the public hearing, the Board granted a request for party status in opposition to the application from Ethel J. Hackney, a neighbor residing near the subject property.

Applicant’s Case. The Applicant described plans to use a portion of the two-story building on the subject property as a child development center for 40 children. According to the Applicant, the proposed child development center would not create any adverse impacts, in part because the Applicant had agreed to comply with a “neighborhood cooperation agreement” negotiated with several members of ANC 4A and residents living near the subject property. The Applicant also asserted that traffic patterns for student drop-offs and pick-ups will be efficiently arranged so that neighbors will not be inconvenienced. The Applicant’s traffic expert testified that there is

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adequate capacity along the local area roadways and intersections to accommodate the moderate increase in traffic that will be generated by the child development center.

Government Reports. By memorandum dated March 10, 2009, the Office of Planning (“OP”) recommended approval of the application subject to several conditions pertaining to the maximum number of children and employees at the child development center, its hours of operation, and drop-off and pick-up procedures. OP did not anticipate any adverse impacts on the neighborhood as a result of the child development center but recommended approval of the requested special exception subject to conditions similar to those adopted by the Board for another child development center previously located at the subject property “to mitigate concerns of abutting neighbors.”

By memorandum dated March 5, 2009, the District Department of Transportation (“DDOT”) stated its conditional approval of the application, noting that the child development center might increase traffic demand on local neighborhood streets adjacent to its entrance and recommending that the Board require the Applicant to implement a transportation management plan to ensure proper site circulation and the safest means for children to access the location. DDOT expressed support for the circulation plan contained in the neighborhood cooperation agreement, which would preclude use of the alleys by the Applicant and visitors to the child development center.

By memorandum dated November 14, 2008, the Office of the State Superintendent of Education, Early Childhood Education, Child and Residential Care Facilities Division recommended approval of the application. According to the Office of the State Superintendent of Education, the proposed child development center “would greatly benefit the City’s growing demand for licensed child care facilities.”

ANC Report. By letter dated March 9, 2009, ANC 4A indicated that, at a regularly scheduled and properly noticed meeting on March 3, 2009, with a quorum present, the ANC voted 7 to 1 to recommend approval of the requested special exception contingent upon the signing of a neighborhood cooperation agreement between the Applicant, nearby neighbors, and the appropriate 4A commissioners. ANC 4A based its recommendations in part on its findings that “issues concerning the overall increase to traffic have been addressed” and that the Applicant’s agreement with neighbors will provide “opportunities to address issues that may occur.”

Party in Opposition to the Application. Ethel J. Hackney opposed approval of the requested special exception on the grounds that: (a) there is little or ineffective recourse to enforce the Applicant’s traffic and parking management plan; (b) other programs at the subject property have resulted in undue parking congestion on 16th Street; (c) the child development center might serve primarily out-of-town students, not District students; and (d) it is unreasonable to expect a witness of an alleged parking violation to record the alleged violation on camera, as prescribed in the Applicant’s neighborhood cooperation agreement.

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Persons in Support of the Application. The Board received letters and signed petition statements from several persons in support of the application, who described a need for child care in the neighborhood and stated that the Applicant's proposed child development center would not create objectionable impacts.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 7750 16th Street, N.W. (Square 2745F, Lot 81).
2. The lot is rectangular, 127.28 feet wide and 150 feet long, and has an area of 19,092 square feet. The property slopes downward from Sixteenth Street to the rear of the lot.
3. The rear of the lot abuts a public alley, 16 feet wide, that runs north-south between Kalmia and Jonquil Streets.
4. The subject property provides 13 off-street parking spaces, which are accessible via the alley.
5. The property is improved with a two-story building constructed in 1966 as a church. The building will continue to be used primarily for church functions.
6. A child development center was operated at the subject property from 2000 to 2003. (*See* BZA Order 16590, issued July 24, 2000). The subject property was used as a high school from 1968 to 2000 for up to 40 children. The location hosted a summer day camp from 2003 to 2007.
7. The surrounding properties mostly contain one-family dwellings. The Lowell School, a child development center and private school, is located at 1640 Kalmia Road, in the same square as and within 1,000 feet of the subject property.

Applicant's Proposal

8. The Applicant proposes to use 2,275 square feet of the bottom floor of the two-story church building as a child development center for up to 40 children, ages one-and-half to five years, and 14 staff. The entrance to the child development center will be located adjacent to the alley, at ground level.
9. The hours of operation of the child development center will be 7:00 a.m. to 6:30 p.m., Monday through Friday.
10. The child development center will use an outdoor play area located in the rear yard of the subject property, more than 10 feet away from the closest residence. The play area is fenced

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and landscaped in a manner that reduces its visibility to and from abutting properties. The Applicant does not propose to use any off-site play area.

11. Although the outdoor play area is large enough to accommodate all 40 children at once, typically each class has its own outdoor play time, and therefore a maximum of 17 children (i.e. the largest class size) would likely use the outdoor play area at any one time.
12. The Applicant proposed to implement a transportation management plan ("TMP") as part of its neighborhood cooperation agreement, which will be effective for a term of three years. The plan addresses matters relating to traffic routes, parking, and procedures for the drop-off and pick-up of children, and lists sanctions for noncompliance. Pursuant to the transportation management plan, the Applicant will implement certain requirements applicable to drivers coming to the child development center so as to minimize the potential for creating any adverse traffic or parking impacts. The requirements include prohibitions disallowing parents and caregivers from:
 - a. Driving through or into any of the 16th Street alleys to pick up or drop off students (except in the case of a physically disabled student, and then subject to certain conditions), or to attend meetings with staff members at the child development center;
 - b. Using any driveways to execute a three-point turn near the subject property;
 - c. Parking on Jonquil Street N.W. on either side of 16th Street N.W., or within five feet of the entrance of any garage or driveway in the community. Drivers will be encouraged to seek a parking space first on Kalmia Road west of 16th Street, then on Kalmia Road east of 16th Street, and, if more spaces are available at either location, park on 16th Street if permitted by applicable parking restrictions; and
 - d. Using a vehicle to transport a student to or from the subject property that does not display a placard provided by the child development center.
13. The Applicant will include the above restrictions into its enrollment agreement with parents or guardians of students enrolled in the child development center as well as the family handbook, which it distributes to parents.
14. For at least 30 minutes during the morning and evening peak pick-up and drop-off periods, which the Applicant expects will be 8:15 a.m. to 8:45 a.m. and 5:15 p.m. to 5:45 p.m., the child development center will post at least one member of its staff at the entrance to the alley at Kalmia Road and 16th Street to direct drivers to park on Kalmia and walk students to the entrance of the center.
15. Employees of the child development center will monitor the parking area at the subject property during peak morning and afternoon activity, and randomly at other times, to assure that drivers comply with the neighborhood cooperation agreement.

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16. Employees of the child development center will park in the parking lot at the subject property, where at least four parking spaces will be reserved for their use. Staff drivers will enter on Jonquil Street and exit at Kalmia Road.
17. The child development center will offer its staff an employee benefit to encourage the use of public transportation.
18. The Applicant's facility is capable of meeting all applicable code and licensing requirements.

Harmony with Zone Plan

19. The Board credits the testimony of the Office of Planning that approval of the requested special exception would not adversely affect the use of the neighboring property because similar uses have been regularly accommodated at the subject property in the past and because the child development center would be located indoors within a brick building that would mitigate any sounds generated by the children.

CONCLUSIONS OF LAW

The Applicant seeks a special exception under 11 DCMR § 205 to establish a child development center with a maximum enrollment of 40 children and 14 staff. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001), to grant special exceptions, as provided in the Zoning Regulations. Subsection 3104.1 of those regulations generally authorizes the Board to grant a special exception if the use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of the neighboring property, subject to specific conditions.

The specific conditions applicable to the grant of a special exception for a child development center in the R-1-B zone district are set forth in § 205. The provisions of that section require that (a) the child development center must be capable of meeting all applicable code and licensing requirements (§ 205.2); (b) the child development center must be located and designed to create no objectionable traffic conditions and no unsafe conditions for picking up and dropping off persons in attendance (§ 205.3); (c) the child development center must provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors (§ 205.4); (d) the child development center, including any outdoor play space provided, must be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual, or other objectionable conditions (§ 205.5); and (e) any off-site play area must be located so as not to result in endangerment to the individuals in attendance at the center in traveling between the play area and the center (§ 205.7). The Board may require special treatment in the way of design, screening of buildings, planting and parking areas, signs, or other requirements deemed necessary to protect adjacent and nearby properties. 11 DCMR § 205.6. The Board may approve more than one child or elderly development center

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or adult day treatment facility in a square or within 1,000 feet of another such facility only when the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors. 11 DCMR § 205.8.

Based on the findings of fact and for the reasons discussed below, the Board finds that the Applicant has met its burden in proving that the proposed child development center at the subject property will satisfy the provisions of § 205. The Board further concludes that, the conditions adopted in this order will minimize any potential adverse impacts; and that operation of the proposed child development center will not tend to adversely affect the use of any neighboring property.

The Board finds that the proposed child development center will be located and designed to create no objectionable traffic conditions and no unsafe conditions for picking up and dropping off persons in attendance. The center will be located in a building that has previously housed a child development center as well as a high school and summer camp. Consistent with the neighborhood cooperation agreement, the child development center will implement a detailed traffic and parking management plan that establishes procedures for the drop-off and pick-up of children at the center, subject to monitoring and enforcement by the center's staff. The Board has imposed a condition identifying procedures that must be in the final plan. Enrollment will be limited to 40 children, and their arrival and departure times will be staggered both in the morning and in the evening.

The child development center will provide sufficient off-street parking, as four of the 13 spaces on the subject property will be reserved for use by the center's staff, who will also be offered a financial incentive to use public transportation. As part of its traffic management plan, the center will disseminate information to parents concerning appropriate on-street parking locations in the vicinity, and its staff will monitor vehicles coming to the subject property to ensure that drivers will not block the alley or neighbors' driveways. The Board credits the testimony of the Applicant's traffic expert that ample street parking is available in the vicinity of the subject property.

The Board concludes that the location and design of the child development center's outdoor play area will not create any objectionable impacts on adjacent or nearby properties due to noise, activity, visual, or other objectionable conditions. The outdoor play space will be amply screened to reduce its visibility and will be located more than 10 feet away from the adjacent residence to mitigate any noise impact from supervised play on the tot lot. In addition, employees of the child development center will manage the outdoor play space in a manner which will avoid any objectionable condition, noting that the center will typically limit use of the play area to one class at a time.

The Board notes that another child development center is located within 1,000 feet of the subject property. However, the Board does not find that the cumulative effect of the facilities will have

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an adverse impact from noise, traffic, or other similar factors, in part because the other child development center is located on a different street from the Applicant's property.

The Board is required to give "great weight" to the issues and concerns of the affected Advisory Neighborhood Commission and to the recommendations of the Office of Planning. By a letter dated March 3, 2009, ANC 4A recommended approval of the application contingent upon the signing of a neighborhood cooperation agreement between WES, nearby neighbors, and the appropriate 4A commissioners, which subsequently occurred. By a memorandum dated March 10, 2009, OP recommended approval of the application with conditions, which are addressed in this Order.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and ANC 4A, the Board concludes that the Applicant has satisfied the requirements for a special exception under § 205 to establish a child development center for 40 children and 14 staff in the R-1-B district at 7750 16th Street, N.W. (Square 2745F, Lot 81). Accordingly, it is therefore **ORDERED** that this application is **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. This approval shall be valid for a period of three years from the effective date of this Order.
2. The child development center shall have enrollment of no more than 40 students ages one and a half to five years old.
3. The child development center's staff shall be limited to no more than 14 persons.
4. Hours of operation of the child development center shall be limited to 7:00 a.m. to 6:30 p.m., Monday through Friday.
5. The Applicant shall implement a traffic and parking management plan consistent with the provisions delineated in Findings of Fact No. 12 through 16.
6. The Applicant and any future operator of the center shall include restrictions consistent with those stated in Finding of Fact No. 12 in its enrollment agreement with parents or guardians of students enrolled in the child development center as well as the family handbook, which it distributes to parents.
7. Except in case of an emergency, the Applicant shall provide at least one week notice to neighbors regarding special events at the child development center.

VOTE: **4-0-1** (Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman, and Anthony J. Hood voting to approve; Mary Oates Walker not participating, not voting)

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

A majority of Board members approved the issuance of this order.

FINAL DATE OF ORDER: MAY 20, 2009

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 § 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.

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

Application No. 17924 of Andrew Johnson, pursuant to 11 DCMR § 3104.1, for a special exception for a change of nonconforming use from a grocery store to a grocery store and dry cleaning pick-up establishment under subsection 2003.1, in the R-3 District at premises 3008 Q Street, N.W. (Square 1269, Lot 311).

HEARING DATE: May 19, 2009
DECISION DATE: May 19, 2009 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. ANC 2E 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 2001.3. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 2001.3, 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) be **GRANTED**.

VOTE: **3-0-2** (Michael G. Turnbull, Shane L. Dettman, and Marc D. Loud to approve;
no other Board members participating)

BZA APPLICATION NO. 17924
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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A Majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: MAY 27, 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.

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.

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

Application No. 17929 of Two Rivers Public Charter School, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the off-street parking requirements under subsection 2101.1, or alternatively a special exception to allow the accessory parking spaces to be located on a separate lot under subsection 2116.5, to accommodate new construction for the expansion of an existing charter school in the C-M-1 District at premises 1234 4th Street, N.E. (Square 772, Lot 16).¹

HEARING DATE: May 19, 2009

DECISION DATE: May 19, 2009 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5).

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 the Applicant, Advisory Neighborhood Commission (ANC) 6C, and to all owners of property within 200 feet of the property that is the subject of this application. The subject property is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C filed a report, dated May 14, 2009, indicating that, at a duly noticed public meeting at which a quorum was present, the ANC voted unanimously to support approval of the application.² (Exhibit 26). The Office of Planning (OP) also submitted a report in support of the application.³ (Exhibit 25).

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance under § 3103.2 from the off-street parking requirements under subsection 2101.1. No

¹ The Applicant amended the application to delete a variance from the single roof structure requirements under subsection 411.3.

² The ANC submitted its report two days beyond the deadline, due to the fact that the deadline coincided with the ANC's meeting date. The Board granted a waiver of the rules to accept the report.

³ OP's report indicates that it recommended approval of both variances that were sought in the Application as advertised, that is, from the single roof structure requirements and from the off-street parking requirements. OP noted that it preferred variance relief regarding the off-street parking requirements to the alternative of special exception relief because the latter relief could open the Applicant to the possibility of returning to the Board for future approvals should the lease arrangements for accessory parking spaces expire and not be extended. Three parking spaces are located at the site; ten parking spaces are required. Thus, relief is needed for seven parking spaces.

BZA APPLICATION NO. 17929**PAGE NO. 2**

parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. 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 the Applicant has met the burden of proof under 11 DCMR § 3103.2 for variances from § 2101.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates both practical difficulties and undue hardship for the owner in complying with the Zoning Regulations, and that the requested 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 requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case. It is therefore **ORDERED** that the application (pursuant to Exhibit 11 – PLANS) be **GRANTED**.

VOTE: **3-0-2** (Shane L. Dettman, Marc D. Loud, and William W. Keating, III to approve; no other members present or voting)

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

A majority of Board members approved issuance of this order.

FINAL DATE OF ORDER: MAY 27, 2009

UNDER 11 DCMR § 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL BECOME EFFECTIVE 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.

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BZA APPLICATION NO. 17929

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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.

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

NOTICE OF FILING

APPLICATION NO. 17972

On May 15, 2009, the Foreign Missions/Board of Zoning Adjustment of the District of Columbia, received the above-numbered application from Christopher H. Collins, Esq., with the law firm of Holland & Knight LLP, on behalf of the Kingdom of Sweden by the National Property Board, SFV (Statens Fastighetsverk), on behalf of the Embassy of Iceland, pursuant to 11 DCMR § 931.3, and Chapter 10, and § 206 of the Foreign Missions Act, 22 USC § 4306, to locate a chancery in excess of the permitted 2.0 floor area ratio limitation (section 931.3), in the W-2 District at premises 2900 K Street, N.W. (Square 1171, Part of Lot 82, including Lots 814, 7001 and 7002).

The application will be considered by the Board in accordance with the requirements of the Foreign Missions Act, and any appropriate provisions of the Title 11 Zoning Regulations.

This is not a notice of public hearing on the application. That notice will be published at least 40 days in advance of the hearing.

For additional information about this application, contact the Office of Zoning, at 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001, telephone (202) 727-6311.

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