

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

SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS

July 2009

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME/ LOCATION
John McFarland	Board of Accountancy	16	8:30 am-12:00pm
Leon Lewis	Board of Appraisers	15	10:00 am-12:00 pm
Leon Lewis	Board Architects and Interior Designers	17	9:00 am-1:00 pm
Sheldon Brown	Board of Barber and Cosmetology	6	10:00 am-4:00 pm
Sheldon Brown	Boxing and Wrestling Commission	14	7:00-pm-9:00 pm
Sheldon Brown	Board of Funeral Directors	9	1:30 pm-5:00 pm
John McFarland	Board of Professional Engineering	23	9:30 am-1:30 pm
Leon Lewis	Real Estate Commission	14	10:30 am-12:30 pm
Pamela Peters	Board of Industrial Trades	21	5:30 pm-7:00 pm
	Asbestos Electrical Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

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

D.C. PREPARATORY ACADEMY**INVITATION FOR BID****Food Services**

D.C. Preparatory Academy is advertising the opportunity to bid on the delivery of breakfast, lunch, and/or snack meals to children enrolled at the school for the 2009-2010 school year, with a possible extension of four (4) one-year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, and Snack meal pattern requirements.

Please email [**bids@dcprep.org**](mailto:bids@dcprep.org) for additional specifications outlined in the Invitation for Bid (IFB). Bids not addressing all areas as outlined in the IFB will not be considered.

Bids are due by July 10, 2009.

EARLY CHILDHOOD ACADEMY PCS**REQUEST FOR PROPOSALS****Meal Services**

The Early Childhood Academy PCS will receive bids until July 17, 2009 at 5:00 PM. Early Childhood Academy Public Charter School is advertising the opportunity to bid on the delivery of breakfast, lunch, and/or snack meals to children enrolled at the school for the 2009-2010 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, and Snack meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained from

Shameeka Lawson
4025 9th Street SE
Washington, DC 20032
(202) 373-0035 ext. 304

All bids not addressing all areas as outlined in the IFB will not be considered.

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

Certification of Filling Vacancies
In Advisory Neighborhood Commissions

Pursuant to D.C. Official Code §1-309.06(d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections and Ethics “Board” from the affected Advisory Neighborhood Commission, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Bhavna Patel
Single-Member District 2B02

**DEPARTMENT OF HEALTH
COMMUNITY HEALTH ADMINISTRATION**

NOTICE OF FUNDING AVAILABILITY # CHA-RFA-070609

**District of Columbia Grant
Commodity Supplemental Food and Senior Farmers Market Nutrition Program**

The Government of the District of Columbia, Department of Health (DOH), Community Health Administration (CHA) is soliciting applications from qualified organizations located and licensed to conducted business within the District of Columbia to manage and operate the Commodity Supplemental Food Program and Senior Farmers Market Nutrition Program.

These funds will be awarded by the Community Health Administration using federal funds awarded to the D.C Department of Health by the U.S. Department of Agriculture, Commodity Supplemental Foods Program, Senior Farmers Nutrition Program and by the U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Services Block Grant.

CHA intends to award up to \$900,000 to one organization or a consortium of organizations to manage and operate the Commodity Supplemental Food Program and Senior Farmers Market Nutrition Program.

The Request for Applications (RFA) will be released on Monday, July 6, 2009, and the deadline for submission is 4:00 pm, EST on Monday, August 3, 2009. The RFA may be obtained from the Department of Health, 825 North Capitol St., NE – 3rd Floor Reception Area. The RFA will also be available on the Office of Partnerships and Grant Services website, www.opgs.dc.gov under the District Grants Clearinghouse.

Please contact Charles Nichols at (202) 442-9342 for additional information.

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

**NOTICE OF FUNDING AVAILABILITY
RFA No. HAA_CTR_7.10.09**

2009 HIV Counseling, Testing, Referral and Navigator Services Grant

The Government of the District of Columbia, Department of Health-HIV/AIDS Administration is soliciting applications from qualified organizations located and licensed to conduct business with the District of Columbia to provide a variety of HIV Counseling, Testing and Referral services to residents of the District of Columbia, with special emphasis on populations disproportionately affected by HIV/AIDS.

It is anticipated that approximately \$1,400,000.00 will be available for FY 2010 grant awards, with an optional, performance-based continuation year. All awards will be based on the availability of funds. Grants will be awarded through the use of District of Columbia Appropriated Funds as authorized by the FY 2010 Budget Support Act (BSA) of 2009.

The release date for this RFA is Friday, July 10, 2009. The Request for Applications (RFA) will be available for download on the following website www.opgd.dc.gov under District Grants Clearinghouse. Alternatively, the RFA may be picked up from the HIV/AIDS Administration offices at 64 New York Ave, N.E., Suite 5001, Washington, DC beginning July 10, 2009.

The Request for Application (RFA) submission deadline is no later than 5:00 p.m. on August 10, 2009. All applications will be recorded upon receipt. Any additions or deletions to applications must be submitted prior to the deadline of 5:00 p.m. on August 10, 2009. Late applications will not be accepted for funding consideration. A Pre-Application Conference will be held **on Friday, July 17, 2009 from 10:30 a.m. – 12:30 p.m.**, at 64 New York Ave, N.E., Washington, DC in the HIV/AIDS Administration's 1st floor conference room.

HIV/AIDS Administration
Contact: Stacey Cooper, MSW
64 New York Avenue, N.E.
Washington, DC 20002
Phone: 202.671.4900
Fax: 202.671.4860
Email: Stacey.Cooper@dc.gov

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

**NOTICE OF FUNDING AVAILABILITY
RFA # HAA_EFB_07.10.09**

Effi Barry HIV/AIDS Program: Supporting District organizations to increase capacity to provide HIV-related prevention, care, and support services

The Government of the District of Columbia, Department of Health HIV/AIDS Administration (HAA) is soliciting applications from small (program budgets less than \$500,000) District organizations to participate in the Effi Barry HIV/AIDS Program. The Effi Barry Program is a two-year training and capacity-building initiative that seeks to strengthen the internal administration and build the capacity of small community and faith-based organizations based and located within areas of the District hardest hit by the HIV/AIDS epidemic to start and/or expand a range of HIV/AIDS prevention and support programming. HAA encourages applicants that have HIV/AIDS as their primary mission and also those that seek to mainstream HIV activities into non-HIV/AIDS primary missions. This program is specifically designed for organizations operating in the areas of the District hardest hit by HIV/AIDS, with priority focus on District Wards 7 and 8*.

In addition to the standard 2-year Effi Barry Program, there are two additional program options: **Effi Accelerated** is a less intense version of the core Effi Barry HIV/AIDS Program with a specific focus on HIV/AIDS programming for organizations unable to commit the time and resources necessary to participate in a two year program. The second new component is **Linkages**, which consists of a collaboration of 2-3 organizations that agree to work together as to facilitate a HIV/AIDS integrated service delivery or shared best practices model.

At least \$520,000 will be available for the Effi Barry program from core Effi Barry funds. Funds may be awarded as follows:

- Effi Barry Year-1 Applicants: \$10,000 mini-grants for up to 10 new organizations; total funding amount approximately \$100,000.
- Effi Barry Year-2 Applicants: up to 10 mini-grants for continuing organizations (Year-Two organizations are those that participated in the FY09 Effi Barry Program and successfully completed the training workshops); total funding amount of \$300,000 with no single award more than \$50,000.
- Effi Accelerated Applicants: up to \$2,500 in participation-related expenses for up to 10 organizations.
- Linkages Applicants: mini-grants for up to three (3) collaborations applicants (Linkages organizations consist of a maximum of 3 organizations that have agreed to work together to facilitate an integrated HIV/AIDS service delivery model or a shared Best Practice model); total funding amount approximately \$75,000 with no single award more than \$50,000.

Key trainings and technical assistance will also be provided to support, successful new (Year-One) applicants, continuing (Year-Two) organizations, *Effi Accelerated* participants and *Linkages* participants.

**Note: core Effi Barry Program funds are specifically intended for organizations that are located in District Wards 7 and 8. Expanded Effi Barry Program participation of organizations not located in District Wards 7 and 8 will be supported subject to availability of other appropriations not included in the Effi Barry-specific appropriations and non-lapsing fund.*

The RFA will be available in the District of Columbia for pick up at 64 New York Avenue, NE, 5th Floor, Suite 5001 and on the following website www.opgd.dc.gov under the **District Grants Clearinghouse on Friday, July 10, 2009**. Deadline for application submission is Monday, **August 10, 2009 no later than 5:00 p.m.**

Applicants obtaining this RFA through the Internet must provide the HIV/AIDS Administration with the following c/o Jabari Bruton (Jabari.Bruton@dc.gov):

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

The Pre-Application meeting will be held in the District of Columbia at HIV/AIDS Administration, 64 New York Avenue, NE, 5th Floor, **Friday July 17, 2009** from 10:30 a.m. to 12:30 p.m. 5th Floor Conference Room.

Please contact Jabari Bruton at (202) 671-4946 for additional information.

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

**NOTICE OF FUNDING AVAILABILITY
RFA No. HAA_HSG_07.10.09**

**FY2010 Supportive Services for Persons Living with HIV/AIDS:
Housing Services and Food Services Grant**

The Government of the District of Columbia, Department of Health, HIV/AIDS Administration is soliciting applications from qualified organizations located and licensed to conduct business within the District of Columbia to provide supportive services to persons living with HIV/AIDS, specifically housing services and food services to low income, uninsured and under-insured residents of the District of Columbia who are HIV- infected.

The final number and total amount of awards will be based on the availability of both federally and locally appropriated funding.

Services under the FY 2010 Housing Notice of Funding Availability are:

- Project Based Housing Assistance: approximately \$825,000 in funds awarded to the District of Columbia from the U.S. Department of Housing and Urban Development (HUD) funding, based on availability
- Food Services for Persons Living with HIV/AIDS: approximately \$300,000 in locally appropriated funds will be available to support food services, including home-delivered meals and/or food bank services, for persons living with HIV/AIDS.

The services requested will target low income residents of the District of Columbia living with HIV/AIDS and their families. The HIV/AIDS Administration does not expect release of an additional NOFA for housing services in Fiscal Year 2010.

The Request for Application (RFA) submission deadline is no later than 5:00 p.m. on August 10, 2009. All applications will be recorded upon receipt. **Applications submitted at or after 5:01 p.m., August 10, 2009, will not be forwarded to the review panel for funding consideration.** Any additions or deletions to an application will not be accepted after the deadline of 5:00 p.m. August 10, 2009.

The RFA will be available in the District of Columbia for pick up at 64 New York Avenue, NE, 5th Floor, Suite 5001 and on the following website www.opgd.dc.gov under the District Grants Clearinghouse on **Friday, July 10, 2009.**

Applicants obtaining this RFA through the Internet must provide the HIV/AIDS Administration with the following to Patrice Bailey (Patrice.Bailey@DC.Gov):

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

The Pre-Application meeting will be held in the District of Columbia at HIV/AIDS Administration, 64 New York Avenue, NE, 5th Floor conference room, **Friday, July 17, 2009 from 1:30 p.m. to 3:30 p.m.**

HIV/AIDS Administration
64 New York Ave. N.E.
5th Floor, Suite#5001
Washington, DC 20002
Phone: (202) 671-4900
Fax: (202) 671-4860
Email: Patrice.Bailey@DC.Gov

Please contact Patrice Bailey at (202) 671-4946 for additional information.

PAUL PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSAL**

Paul Public Charter School is seeking proposals from **Qualified Contractors** to build-out a dance studio and exercise room.

Construction documents and bid specifications are available beginning Friday, July 10, 2009 by contacting:

Mr. Harold Bardonille
5800 Eighth Street, NW
Washington, DC 20011
(202) 291-7499.

A **bidder's conference** and site inspection will begin at 10:30 AM on Tuesday, July 14, 2009.

Proposals will be accepted on Friday, July 17, 2009 by 4:00 PM.

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

Application No. 17837 of Hillcrest Homes LP, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the maximum number of building stories under § 400, a variance from the lot area and width requirements under § 401, a variance from the rear yard requirements under § 404, a variance from the side yard requirements under § 405, a special exception to permit two or more principal buildings or structures on a single subdivided lot under § 2516, and a variance from the requirement of § 2516.5 that theoretical lots allowed pursuant to § 2516 provide open space in front of the building entrances to construct a new residential development consisting of 54 one-family detached dwellings in the R-1-B District at premises north side of Southern Avenue, S.E., just west of Branch Avenue, S.E.,¹ (Parcels 208/4, 208/61, 208/64, 208/65, and 215/27).

HEARING DATE: November 18, 2008

DECISION DATE: November 18, 2008

DECISION AND ORDER

This application was submitted on June 2, 2008 by Hillcrest Homes Associates LP (“Applicant”), the owner of the property which is the subject of this application – Parcels 208/4, 208/61, 208/64, 208/65, and 215/27, all located within a roughly triangular swath of land bordering on the northern side of Southern Avenue, S.E. (“subject property”). The self-certified application requests variance and special exception relief necessary to permit construction of a new development consisting of 54 one-family detached dwellings.

The Board held a public hearing on the application on November 18, 2008 and decided, at the close of the hearing, to approve the application, with certain conditions, by a vote of 5-0-0.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated June 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”) 7B, the ANC within which the subject property is situated, the Single Member District member for 7B05, and the Council Member for Ward 7. Pursuant to 11 DCMR § 3113.13, OZ published notice of the public hearing on the application in the *D.C. Register*, and sent such notice to the Applicant, ANC 7B, and all owners of property within 200 feet of the subject property.

¹Whether or not specifically stated, all roadways referred to herein are located in the Southeast Quadrant of the District of Columbia, and therefore, the names of such roadways when referenced herein should be read as if followed by the designation “S.E.”

BZA APPLICATION NO. 17837**PAGE NO. 2**

Requests for Party Status. ANC 7B was automatically a party to this case and appeared in opposition to the application. The Board also granted opposition party status to a neighbor, Mr. Julius Fleischman. Mr. Fleischman expressed concerns with increased traffic and soil erosion. In addition, he also complained of the density of the proposed development, potential decreased property values and interference with the neighborhood's "bucolic and pastoral" setting.

Applicant's Case. Several people testified on behalf of the application. A representative of the developer discussed the history of the proposal, the site as a whole, and the design of the individual dwellings. The Applicant's architect testified as to the specifics of the project and addressed the special exception and variance tests. The Applicant's land use expert testified in greater detail concerning the two tests and how the application met all their requirements. The Applicant's traffic expert was also at the hearing, but did not testify.

Government Reports. The Office of Planning filed a report with the Board dated November 11, 2008 recommending approval of the application, subject to certain conditions. OP first laid out the variance relief required by the different building sites and then analyzed each type of variance request in the context of the three-pronged variance test. OP also opined that variance relief might be necessary for four of the lots for minimum parking requirements. Next, OP addressed the special exception relief requested, and ended by recommending approval of all the requested relief, with three conditions. The three conditions are: (1) there be no gate or fence restricting entry to the private road or alley, (2) the Applicant should clarify the management of the open space area, and (3) that any retaining walls in the development should adhere to certain suggested design standards.

The D.C. Department of Transportation filed a report with the Board dated November 10, 2008. DDOT analyzed various aspects of the proposed development, including the extension of Southern Avenue by the Applicant, expected trip generation levels, parking, access and circulation, and the proximity of public transportation. The DDOT report noted that the development will provide 100 parking spaces when only 54 are required and that the Applicant is providing a complimentary Smartrip Card and car sharing subsidy with each home sales agreement. DDOT also noted that the Applicant will dedicate approximately 128,259 square feet of land to the District for the Southern Avenue right-of-way. DDOT had no objections to the proposed development.

The District Department of the Environment ("DDOE") filed a report with the Board dated October 3, 2008, which made several suggestions concerning environmental aspects of the proposed development. DDOE recognized the topographical challenges of the site and recommended more stringent erosion control and stormwater management measures than might otherwise be undertaken. DDOE commended the Applicant for deciding to maintain the northern portion of the site in its wooded state, and recommended formalizing this decision. DDOE also opined that the development should rely heavily on public transit and should reduce the number of parking spaces provided.

BZA APPLICATION NO. 17837**PAGE NO. 3**

The D.C. Fire and Emergency Services Department filed a report with the Board dated September 15, 2008 stating that the Department had no objections to the proposed development, as long as it complied with all applicable codes and laws.

ANC Report. ANC 7B filed a submission with the Board on November 10, 2008, which consisted of a package including the ANC's statement in opposition to the application (called a "Work Sheet"), the minutes from the September, 2008 ANC meeting at which the application was addressed, and at least 111 letters in opposition from individuals in the surrounding community. The ANC also submitted a resolution from 2005 in opposition to an earlier iteration of the proposed development. According to the ANC representative at the hearing, because both iterations raised the same/similar issues, the ANC, in 2008, re-adopted the 2005 resolution.

In its statement, the ANC voices concerns about increased erosion, as well as increased traffic and related air pollution due to the development, which will be exacerbated, according to the ANC, by a concomitant reduction in trees and open space. The ANC expresses concerns about the density of the development and claims that the multiple variances requested amount to a "back door rezoning." Exhibit No. 33, ANC Work Sheet dated November 6, 2008, at 2. The ANC also fears an increase in crime in the Hillcrest Neighborhood with the opening of Southern Avenue, S.E. between Branch Avenue and Naylor Road.

FINDINGS OF FACTThe subject property and the surrounding area

1. The subject property consists of five parcels, Parcels 208/4, 208/61, 208/64, 208/65, and 215/27 in an R-1-B zone district in the Southeastern quadrant of D.C.
2. The subject property is an oddly-shaped, roughly triangular site, and has approximately 12.59 acres, or 547,592 square feet, of land area.
3. The property is situated along the District's southern border with Prince George's County, Maryland ("P.G. County") and lies between Branch Avenue and Naylor Road.
4. The property is currently heavily wooded and is characterized by severe topography, with a rise of more than 100 feet from the southeast to the northwest.
5. The property has no existing access from any public street and has only 70 feet of street frontage along Branch Avenue, S.E. Southern Avenue runs along the boundary between the District and P.G. County, but ends at Branch Avenue before reaching the property.
6. The Applicant intends to devote approximately three acres to complete a public extension of Southern Avenue which will run along the southern boundary of the property. The Applicant intends to construct the portion of this extension which will be necessary to serve

BZA APPLICATION NO. 17837**PAGE NO. 4**

the development and to dedicate approximately 128,259 square feet to the District to complete the extension and connect Southern Avenue with Naylor Road, S.E.

7. To the south/southeast of the property, across what would be the continuation of Southern Avenue, is a large apartment building, with over 300 units, called the Marlborough House. It is situated in P.G. County, and, by virtue of an easement, part of its surface parking lot extends onto the property and will remain after the property is developed.
8. To the west and northwest of the property, in an R-5-A zone district, is Naylor Gardens, a large multifamily residential development containing 45 garden apartment buildings with approximately 800 units.
9. An area of woods is located along the southwest boundary of the property.
10. To the north of the property is a 20-foot wide public alley and a neighborhood of one-family dwellings within the same R-1-B zone district as the subject property.
11. The property is approximately 1,500 feet from the Naylor Road Metrorail Station, which is in P.G. County and is served by 10 Metrobus routes. Two Metrobus routes also run along Southern Avenue.

The Applicant's Project

12. The Applicant purchased the property in 2005 with the intention of constructing a medium-to high-density residential development.
13. The Applicant's original plan proposed a zone change and the construction of 171 townhouses, but that plan underwent significant change between 2005 and 2008, partially due to neighborhood desire for detached one-family dwellings on the site. The Applicant's final plan proposes no zone change and 54 detached one-family dwellings.
14. After the dedication of a portion of the property to the District for roadway purposes, the remaining 419,333 square feet of land area will be subdivided into one record lot.
15. The new record lot will then be divided into 54 theoretical building sites ranging in size from 1,955 square feet to 3,385 square feet.
16. Each theoretical building site will be improved with a detached one-family dwelling containing between 1,700 and 2,300 square feet of floor area.
17. The side yards of the dwellings will range in width from approximately five feet to 6.17 feet.
18. The rear yards of the dwellings will range in length from approximately 30 feet to approximately five feet, with 42 of the dwellings having a rear yard of at least 23 feet.

BZA APPLICATION NO. 17837**PAGE NO. 5**

19. Some of the theoretical building sites will require the construction of retaining walls due to the slope of the property.
20. All the theoretical building sites, and thus all the new dwellings, will be situated in the southern half of the property, closest to the Metro station, and extending to the property's eastern boundary.
21. The dwellings will be generally arranged in three lines running parallel to the proposed Southern Avenue extension.
22. An area of approximately 202,408 square feet (approximately 4.69 acres) will remain wooded and undeveloped, including most of the northern half of the property, a buffer corridor area along the eastern property boundary, a similar corridor area along the western boundary, and a large pocket at the southwest corner of the property.
23. The new development will include a private ring road with two points of access from the proposed Southern Avenue extension, and a 20-foot wide private alley running through the center of the development and connecting at each end to the private road. Both the private road and alley will be designed to accommodate two-way traffic.
24. No access to the development will be provided from the north.
25. Each building site, except four which front on Southern Avenue, will provide one off-street parking space, as required by 11 DCMR § 2101.1, and a parking lane on the private road will provide another 65 parking spaces, for a total of 119 spaces within the development.

The need for zoning relief

26. The entire property requires special exception relief under § 2516 in order to construct all the dwellings on one single record lot divided into individual theoretical building sites.
27. Leaving much of the property undeveloped and clustering the new dwellings in the southern half of the property results in smaller lot areas and widths than would be possible if the dwellings were spread more evenly throughout the entire property.
28. Different theoretical building sites and the dwellings proposed thereon need different variance relief, but none of the sites/dwellings need relief from the maximum lot occupancy of 40% mandated for this R-1-B zone (11 DCMR § 403) nor from the maximum building height of 40 feet mandated in the zone (11 DCMR § 400).
29. Overall, 23 building sites need variance relief from the maximum number of stories for the dwelling (3), mandated by 11 DCMR §400; 54 (*i.e.*, all) sites need variance relief from the minimum lot area required by 11 DCMR § 401 and the minimum side yard required by 11 DCMR § 405; 50 sites need variance relief from the minimum lot width set forth in 11

BZA APPLICATION NO. 17837**PAGE NO. 6**

DCMR § 401; 25 sites need variance relief from the 25-foot minimum rear yard requirement of 11 DCMR § 404; and 35 sites need variance relief from the “front yard-type” open space requirement imposed by 11 DCMR § 2516.5.²

Special exception relief under 11 DCMR §§ 2516 and 3104

30. The project complies with all of the other specific conditions for approval as stated in § 2516 and the general standard for special exception approval set forth in § 3104.1.
31. The front of each of the proposed 54 dwellings will be the side upon which the primary entrance is located, but only 19 of the dwellings will have open space in front of their entrances equivalent to the rear yard length required in this R-1-B zone, *i.e.*, 25 feet. 11 DCMR § 404. (§ 2516.5(a) & (b)).
32. All of the proposed 54 dwellings will have rear yards, but only 29 of these rear yards will meet the 25-foot requirement of 11 DCMR § 404. (§ 2516.5 (c)).
33. None of the theoretical sites will share any part of its boundary with the rear lot line of the subdivided lot of which it is a part. (§ 2516.5(d)).
34. None of the land area to be used for the private road or alley is included in the area of any of the theoretical building sites. (§ 2516.6(a)).
35. The private road, which provides ingress and egress to all the building sites, will be at least 25 feet wide at all points. (§ 2516.6(b)).
36. The private road will intersect with the proposed Southern Avenue extension at two points, providing two separate entrances/exits to the means of ingress and egress to the building sites. (§ 2516.6(c)).
37. The height of each proposed dwelling has been measured from the finished grade at the middle of the front of the building to the ceiling of the building’s top story and each dwelling complies with the height limitation of 40 feet set forth in 11 DCMR § 400. (§ 2516.7)).
38. For those specific areas where the proposed development will not comply with the substantive provisions of the Zoning Regulations, the Applicant has requested variance relief. (§ 2516.9)). (See Finding of Fact (“FOF”) No. 29).
39. The significant portion of the property left undeveloped will serve to buffer the already-existing neighborhoods from potential adverse impacts of the development, such as noise and lighting. (§§ 2516.9, 2516.10(d), and 3104).

²The specific variances needed by each separate building site are set forth in a detailed chart at sheet C6.10 of the Applicant’s final plans, Exhibit No. 41.

BZA APPLICATION NO. 17837**PAGE NO. 7**

40. The undeveloped area of the property will also continue to extend the environmental benefits to the surrounding neighborhoods that exist with any undisturbed wooded area, such as less soil erosion, less heat, passive recreation possibilities, wildlife habitat, and aesthetic appeal. (§§ 2516.9, 2516.10(a)(4), 2516.10(d), and 3104).
41. The water and sanitary sewer systems for the proposed development will be constructed to D.C. Water and Sewer Authority (“WASA”) standards and specifications and the proposed storm drainage and SWM/BMP systems will be constructed to DOE, DDOT, and WASA standards and specifications. (§§ 2516.9, 3104, and 2516.10(a)(2)).
42. The Applicant is working closely with DDOE to implement a number of positive environmental features on the property, such as rain barrels, rain gardens, retention of a significant number of trees, including shade trees, use of permeable pavers, and other practices designed to reduce the impact of stormwater runoff. (§§ 2516.9, 3104, and 2516.10(a)(2)).
43. The private road and alley will be constructed to DDOT standards and specifications and will provide adequate access for emergency and trash disposal vehicles. (§ 2516.10(a)(1)).
44. The Applicant will work with DDOT to install appropriate signage and/or signalization at the two intersections between its private road and the proposed Southern Avenue extension. (§ 2516.10(a)(1) & (5)).
45. The Applicant’s extension of Southern Avenue will be constructed to DDOT standards and specifications and will improve the flow of traffic in the area by connecting Branch Avenue and Naylor Road. (§§ 2516.10(a)(5) and 2516.10(c) & (d)).
46. The proposed development is expected to generate 33 morning peak-hour vehicle trips and 14 non-vehicle trips and 43 afternoon peak-hour vehicle trips and 19 non-vehicle trips. These trips will amount to only approximately two percent of the total future forecast traffic at the intersection of Branch Avenue and Southern Avenue during those peak hours. (§§ 2516.9, 2516.10(a)(5), and 2516.10(c) & (d)).
47. The development will provide more than the number of parking spaces required by the Zoning Regulations. (§§ 2516.10(a)(5) and 2516.10(c)).
48. The property is located within one mile of 3 elementary schools and one D.C. Public Schools Educational Center. (§ 2516.10(a)(3)).
49. Recreational opportunities are provided by the undeveloped, wooded area, in the yards provided, and at Hillcrest Recreation Center, located less than one-half mile from the property. (§ 2516.10(a)(4)).
50. The clustering of the development on the southern/southeastern half of the property is a reasonable response to the property’s topographical constraints as well as to the

BZA APPLICATION NO. 17837**PAGE NO. 8**

community's desire to retain open space along the northern boundary of the property. (§ 2516.10(b)).

51. The overall design of the development is pedestrian-friendly, with sidewalks, dwellings close to the street, front porches, street trees, and on-street parking. (§§ 2516.10(a)(6) & (b)).
52. The dwellings are designed with traditional siding or brick exteriors, front porches and gable and hip roofs with dormers, and the façade style and color will be predetermined to ensure an appealing streetscape. (§§ 2516.10(a)(6) & (b)).
53. The one-family dwellings proposed are a matter-of-right use in this R-1-B zone. (§§ 201.1(a) and 3104).
54. Immediately to the west/southwest of the property is the Naylor Gardens apartment complex with approximately 18 units per acre, whereas the proposed development will contain approximately 4.3 units per acre.
55. The overall low density of the development – 54 one-family dwellings where 66 could be constructed without variance relief³ if spread throughout the property – is consistent with the purpose and spirit of an R-1 zone district to provide a quiet residential district. (§ 3104).

Variance relief under § 3103*Exceptional conditions*

56. The property has an extreme topography, with elevations ranging from 160 feet at the southern portion to 280 feet at the northern portion.
57. The property is irregularly-shaped, with no means of vehicular ingress and egress, and a street frontage of only 70 feet, minimal in comparison to its perimeter of over 3,000 feet.
58. The existing property contains an unusually large amount of undeveloped open space, which cannot be developed without causing adverse impact and the loss of an important neighborhood amenity.
59. The Applicant is dedicating approximately 128,259 square feet of the site to the District for the completion of the proposed Southern Avenue extension.

³Even if no variance relief were needed, special exception relief pursuant to § 2516 would still be necessary to permit more than one principal building on a single lot.

BZA APPLICATION NO. 17837**PAGE NO. 9**

60. The extreme southern boundary of the property is encumbered with the parking lot for the Marlborough House, a use which provides no benefits to the development but reduces the property's buildable area.
61. With no public street infrastructure, a good deal of land area is going to private rights of way, further reducing the buildable area.

Practical difficulties

62. The steep topography, which creates serious difficulties in extending existing streets from the north into the property, as well as the need to retain significant open space on the property, push the development onto the southern half of the property, limiting the total land area available for development.
63. Clustering of the one-family dwellings in the southern half of the property results in smaller building sites, thus the need for variances from § 401.3's minimum lot area and width requirements.
64. Lot area and width variances could be avoided by losing a significant portion of the retained open space, which would increase environmental disturbance and potentially have negative impacts on the surrounding neighborhoods.
65. Retention of the open space in the north of the property also creates the need for variances from the 25-foot rear yard requirement of § 404.1 because not all the rear yards will reach a 25-foot length.
66. The clustering of the dwellings also results in narrower-than-permitted side yards, creating the need for variance relief from § 405.9.
67. Strict compliance with side yard requirements would result in narrow, inefficient, "shotgun" dwellings, which would be incompatible with the surrounding area.
68. Section 2516.5 requires that each dwelling without street frontage provide an open space "front yard" area of a minimum of 25 feet in length.
69. All the dwellings without street frontage will have such front yard areas of between approximately 15 feet to just under 25 feet, necessitating a variance from § 2516.5.
70. Strict application of the 25-foot "front yard" requirement would require the Applicant to reduce the size of the already-small building footprints, or to narrow the private road, the latter of which could then require a variance from § 2516.6(b), merely replacing one variance with another.
71. The slope of the property, combined with the requirement of § 2516.7 that the dwelling height be measured from the finished grade at the middle of the front of the building,

BZA APPLICATION NO. 17837**PAGE NO. 10**

results in the height of some of the dwellings exceeding the three-story maximum permitted in the zone under § 400.1.

72. The slope of the property also makes it practically difficult to provide rear parking access to some of the dwellings, necessitating front garage access. The living space taken up by the garages is made up by adding more height to these dwellings, resulting in four stories.

No detriment to public good or impairment of zone plan

73. The proposed development brings into use vacant property within 1,500 feet of a Metro station.
74. The retention of the undeveloped area in the north and west of the property allows the continued existence of an environmental amenity in the area.
75. The proposed extension of Southern Avenue and the resultant connection of Branch Avenue with Naylor Road does not create any detriment to the public good in the sense of unduly increased traffic, but instead improves the street system of the District.
76. The proposed development is substantially less dense than certain surrounding multi-family uses and is buffered from the one-family dwellings to the north by the significant portion of the property to be left undeveloped.
77. The overall current building density to the north of the subject property, including roads, is about 3.9 units per acre; the Applicant is proposing about 4.3 units per acre, and the R-1-B zone permits as many as 8.7 units per acre.
78. The character of the existing housing stock of the Hillcrest neighborhood is diverse, with some large dwellings on large expanses of land, in some cases more than one lot, and with some smaller dwellings located closer to their neighbors.

CONCLUSIONS OF LAWSpecial Exception Relief

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief 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 neighboring property. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of § 3104, the Applicant also had to meet the requirements of § 2516.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements

BZA APPLICATION NO. 17837**PAGE NO. 11**

for the relief requested are met. In reviewing an application for special exception relief, “[t]he Board’s discretion ... is limited to determining whether the proposed exception satisfies the ... requirements” of the regulations and “if the applicant meets its burden, the Board ordinarily must grant the application.” *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305A.2d 516, 518 (D.C. 1973)).

Section 2516 sets forth numerous conditions which must be met in order to obtain a special exception permitting more than one principal building on a single record lot in a residential zone district. Section 3104 states two general provisions which all special exception applications must meet, and which are, to a certain extent, subsumed within the § 2516 provisions. The proposed development meets all but one of the requirements of § 2516, and for those that it does not meet, variance relief has been requested.

As to § 2516, its first substantive requirement is that all other requirements of Chapter 25 and certain other provisions must be met, 11 DCMR § 2516.4, which the Board finds to be the case. Subsection 2516.5 (a) requires that the front of any building without street frontage must contain the principal entrance. In addition, such buildings must have an open space “front yard-type” area of 25 feet in length as well as a rear yard. 2516.5 (b).⁴ All the proposed one-family dwellings will have the principal entrance in their front wall face. All the dwellings will also have rear yards, and some “front yard” space as well, but for both of these requirements, variance relief is requested for those rear yards and front areas that will be less than the minimum required 25 feet in length.

Subsection 2516.6 contains four paragraphs, only two of which apply here ((a) & (b)) and which go more to the overall development than to each individual building site. Section 2516.6(a) requires that the land forming the means of ingress/egress cannot be included in any of the theoretical lots, and (b) states that such means of ingress/egress must be 25 feet in width. Both of these provisions are met by the proposed development. (Findings of Fact (“FOF”) Nos. 34 & 35) The application also complies with § 2516.7, which states that the height of each dwelling must be measured from the finished grade at the middle of the front of the building.

Section 2516.9 consists of two clauses, the first of which states that the proposed development must comply with the substantive provisions of the Zoning Regulations. The development does not do so, and therefore various types of variance relief have been requested. The second clause of § 2516.9 echoes the general mandate in § 3104 of not adversely affecting neighboring property, and will be discussed below.

The last subsection of § 2516 is § 2516.10, which lays out a series of aspects of the development to be reviewed and reported on by the D.C. Office of Planning. All of these aspects of the development were addressed by OP and the Applicant. The Board has also independently

⁴ The subsection also includes a requirement as to placement of the theoretical lot’s rear boundary, which does not apply to any of the theoretical building sites in this application

BZA APPLICATION NO. 17837**PAGE NO. 12**

considered all the issues listed in § 2516.10, and concludes that none of them undermine the approval of the application. The first issue is safety, particularly from a police and fire standpoint. The development will be serviced by a ring-road and an alley, both of which will be wide enough for use by emergency and trash vehicles. The road will have two appropriately-signed and -signalized intersections with Southern Avenue. Environmental issues are next in the § 2516.10 list, and the development's low density and retention of a large area of wooded land, along with the other proposed environmental amenities (FOF Nos. 40 & 42), satisfy the Board that these issues have been successfully addressed by the application.

The development poses no problems from either a public education or recreation perspective, with adequate schools and recreational opportunities available. *See*, FOFs Nos. 48, and 40 & 49, respectively. Nor does it pose problems from a parking and traffic perspective. More-than-adequate parking is being provided and with the wooded land surrounding the development, its relative isolation will not lead to spill-over parking in the area. The isolation of the development also means its street and alley do not connect with any others except at the two intersections with Southern Avenue, therefore, no new traffic through nearby neighborhoods will be caused by the development. The development will allow Southern Avenue to be "completed" to connect Branch Avenue and Naylor Road, improving traffic flow, and any increased traffic due specifically to the development will be minimal. The report from DDOT states that "traffic generated by this project will have no significant impact in terms of capacity and level of service on the surrounding intersections." Exhibit No. 35, at 2.

With regard to considerations of site planning such as the density, open space, and the size, location, and screening of the dwellings, the development has been thoughtfully laid out and designed. The total of 54 one-family dwellings is significantly lower than the 66 dwellings that could be permitted without variance relief and represents a reasonable density of development. A large swath of open, wooded area is being left undeveloped, with the Applicant agreeing to this in perpetuity. Some of the yards around the dwellings are smaller than required, but in the context of the overall development, each of the dwellings is surrounded by sufficient open space and greenery. The design of the dwellings themselves is harmonious with other one-family dwellings in the area and is street-friendly, with front porches overlooking small front yards ending at sidewalks.

This order recites in detail the many facets of the development regulated by §§ 3104 and 2516. These sections also, as a general principle, require that the development be in harmony with the purpose and intent of the Zoning Regulations (§ 3104) and "not likely [to] have an adverse effect on the present character and future development of the neighborhood," (§ 2516.9 & 2516.10(d)) nor "tend to affect adversely the use of neighboring property" (§ 3104). The proposed development meets all these standards. It furthers the purpose of the R-1-B district to provide a "quiet residential area" with matter-of-right one-family dwellings and a large amount of green space. Although the dwellings are clustered in a compact area, the development is not overly dense for the property, with only 54 units on approximately 12 acres. The development is not likely to have any adverse effects on the neighborhood, but instead brings vacant land near a

BZA APPLICATION NO. 17837**PAGE NO. 13**

Metro station into use and, ironically, with the Southern Avenue extension, may improve traffic flow in the area. The Applicant's expert appraiser's submission concerning the impact on the stability of the existing neighborhood concluded that the addition of the 54 new dwellings "would be expected to have a positive impact on the values o[f] the single family neighborhood immediately [to] the north." Exhibit No. 42, at 13.

Variance Relief

Different types of variance relief are needed for different theoretical building sites within the proposed development, but the test remains the same for all of them. The first prong of the test requires an exceptional condition of the property, out of which arises the second prong -- practical difficulties in complying with the Zoning Regulations. The last prong of the test requires that the granting of the relief will not cause a substantial detriment to the public good or a substantial impairment of the intent and purpose of the zone plan. § 3103.

The subject property meets all three prongs of the variance test. The property is irregularly shaped and wooded, necessitating a design to comport with the shape and the clearing of the portion of the property on which development will occur. The southernmost portion of the property already contains part of the parking lot of the Marlborough House, but that is the only area of the property currently paved. There is no existing street infrastructure.

The property has a significant grade differential, with a rise of more than 100 feet from the southeast to the northwest. The southern portion of the property is somewhat flatter, while the northern portion is much steeper. This topographical condition limits the land area available for development, creating practical difficulties in complying with the Zoning Regulations, thereby resulting in a somewhat more tightly-packed development, with smaller lot areas and lot widths than required, and smaller rear, side, and "front" yards than would otherwise be possible. Because the lot areas and lot widths are constrained by the difficult topography, some of the dwellings will exceed the three-story limit imposed by the Zoning Regulations, although none of them will exceed the actual height limit of 40 feet. The unusual topography also creates practical difficulties in connecting to the existing street network to the north, resulting in the need for the Applicant to construct a continuation of Southern Avenue in order to connect the development to existing streets.

To protect the one-family neighborhood to the north of the property, the Applicant has also agreed to a less-dense development than could otherwise be possible. As an outgrowth of less density, a large portion of the land area will remain undeveloped, providing a significant screening and environmental benefit to the community, but constraining the Applicant with regard to lesser buildable area. The buildable area of the property is further reduced by the Applicant's need to provide a roadway infrastructure and by the dedication to the District of land to construct the continuation of Southern Avenue. The "completion" of Southern Avenue will benefit the local area and the District, but constrains the Applicant.

BZA APPLICATION NO. 17837**PAGE NO. 14**

A development with zoning compliant yards, lot areas, and lot widths would obviate the need for variance relief, but could not obviate the need for the special exception pursuant to § 2516. Without variance relief, a maximum of 66 one-family dwellings could be constructed on the property, spread throughout the site. Construction activities on the northern portion of the property, however, could only be accomplished with greatly increased effort and expense on the part of the Applicant because the area would have to be selectively cleared of trees and significantly re-graded. Developing the entire property would destroy the environmental benefits provided by the large amount of undeveloped land that is part of this application and could also exacerbate the traffic impact of the development as the streets to the north would likely be connected to the streets in the development. Constructing fewer dwellings which did not need variance relief could leave some undeveloped land intact, but could create financial difficulties for the Applicant.

All in all, constructing the maximum number of dwellings possible without variance relief creates environmental, topographical, and financial problems and constructing some smaller number of dwellings creates financial difficulties as well. The Applicant has thus demonstrated practical difficulties in complying with the zoning regulations.

The development proposed by the application will not cause a substantial detriment to the public good or a substantial impairment of the zone plan. The application furthers the zone plan, as well as the Comprehensive Plan for the Nation's Capital, by developing vacant land near a Metro station with a low-density development of zone-appropriate one-family dwellings. The application will develop a large piece of vacant land, while leaving a significant part of that land as undeveloped green space. In this way, the surrounding neighborhoods receive benefits due to the development – such as the completion of Southern Avenue – as well as the obvious environmental and aesthetic benefits due to the green space. Although the individual building sites are smaller than required in the R-1-B zone, the overall density of the development is less than that permitted in the zone. The one-family dwellings to the north are buffered from the development and are not connected to it by any streets. This buffering and the clustered design of the sites near Southern Avenue will likely result in no impacts whatsoever on these more northerly one-family dwellings. The greater public good is also positively impacted by this development in that it makes possible the connection of Branch Avenue and Naylor Road through the completion of Southern Avenue.

Even with a reduced buildable area, all the theoretical building sites, except four, will provide the parking space required by the Zoning Regulations on the site itself. The remaining four sites will each have a parking space on the lot dedicated to their use.

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)

BZA APPLICATION NO. 17837**PAGE NO. 15**

and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

The Office of Planning recommended approval of all the relief requested by the application, with three suggested conditions. The Board agrees with OP's recommendation of approval and its proposed conditions.

ANC 7B recommended denial of the application and characterized the variance requests as a "back door rezoning" due to its concern with the density of the development. The Board understands that the density of the proposed one-family dwellings *in relation to each other* is greater than matter-of-right because the yard space around each dwelling is less than required, but does not agree that this amounts to a too-great density on this site, nor to a "back door" rezoning. The overall density of the entire property is actually less than what could be permitted without any variances because of the large amount of land left undeveloped. Further, the open space around each proposed dwelling is not so small as to be inappropriate in terms of urban design. Also, on two sides of the property is much more dense development – Naylor Gardens to the west/northwest, and Marlborough House to the south/southeast.

The ANC also expressed concerns with negative traffic impact and opposed "[o]pening of roads to traffic and crime." Exhibit No. 33, Attached ANC "Work Sheet" at 2. The Board does not agree that the development will cause or exacerbate traffic problems in the neighborhood. The development is not connected to existing neighborhoods except at its intersections with Southern Avenue, a major thoroughfare. Any traffic from the proposed development to or through nearby neighborhoods would have to be via Southern Avenue, with no possibility of drivers from the development "cutting through" existing neighborhoods. The completion of Southern Avenue and connection of Branch Avenue and Naylor Road will open up new travel arteries, providing more options for travelers with the likely result of less congestion. The Board fails to see a connection between the development and the completion of Southern Avenue, and a potential increase in crime in the area.

The ANC also voiced concerns relating to a loss of trees and open space, leading to an increase in erosion and air pollution. Some trees and open space will be lost with the development proposed, but a large amount of open space will also be preserved, and the Applicant has agreed to preserve it permanently. The property is available to be developed, and any development on it will unavoidably result in the loss of some trees and open space. As some loss is unavoidable, the Board concludes that the proposed development strikes a favorable balance between preservation of green space and development and therefore cannot agree with the ANC that the application must be denied.

For all the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application for a special exception pursuant to §§ 2516 and 3104, and with respect to variances pursuant to § 3103 and §§ 400 (number of stories), 401 (lot area and width), 404 (rear yard), 405 (side yard), and 2516.5 ("front yard" area). Accordingly, it is

BZA APPLICATION NO. 17837**PAGE NO. 16****ORDERED** that the application is **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The entry to the private road or alley will not be restricted in any way.
2. No building permit shall be issued for this development until the Applicant has recorded a covenant in the land records of the District of Columbia for the benefit of the District of Columbia that binds the Applicants and all successors in title to preserve, in perpetuity, as undeveloped open space, the northern portion of the property, as well as a portion of the property along its eastern boundary and a portion of the property along the western and southwestern boundaries, all as depicted on the plan at Exhibit No. 53 of the record ("Open Space").
3. The Applicant shall include in the document(s) forming the project's Home Owner's Association a requirement that said Association shall manage and maintain the Open Space for so long as the project is in existence. The document(s) further provide that the Association shall not have the power to rescind or repeal the requirement.
4. Any retaining walls that show an exposed face to a public or private street must adhere to the height standard depicted on Exhibit No. 52 of the record and must be finished with a veneer as depicted on, or substantially similar to a veneer depicted on, Exhibit No. 51 of the record.
5. Four parking spaces, one per dwelling, located somewhere on the lot on which the development is constructed, shall be dedicated in perpetuity for the sole use of each of the dwellings built on theoretical building sites numbers 51, 52, 53, and 54, as depicted on the plans at Exhibit No. 41 of the record, specifically at Sheet C5.00.

VOTE: **5-0-0** (Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman,
Mary Oates Walker and Zoning Commissioner Gregory N. Jeffries
to grant.)

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: JUNE 23, 2009

BZA APPLICATION NO. 17837**PAGE NO. 17**

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

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

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

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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

LM

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

Application No. 17926 of LT Propco LLC, pursuant to 11 DCMR § 3104.1, for a special exception to locate parking spaces on a lot that is separate from the building that they are intended to serve in accordance with subsection 2116.5.¹ The relief is sought to permit the construction of a new one-story retail development on land bounded by Western Avenue, N.W., 44th Street, N.W. and Jenifer Street, N.W., and to use the existing surplus parking located on the existing Lord & Taylor parking lot at 4423 Harrison Street, N.W., in the C-3-A, C-2-A, R-5-B and R-2 Districts (Square 1660, Lot 811 and Square 1580, Lot 33).

HEARING DATE: June 23, 2009

DECISION DATE: June 23, 2009 (Bench Decision)

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 7)

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (ANC) 3E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3E, which is automatically a party to this application. ANC 3E submitted a resolution in support of the application together with a voluntary agreement entered into between the ANC and the Applicant. The ANC's report indicates that the ANC voted to support the application, with conditions, at a duly scheduled meeting at which a quorum was present.² (Exhibit 29). The Office of Planning

¹ The application was brought under subsection 2116.5, while the advertised relief referenced subsections 2116.6 through 2116.9. Subsection 2116.5 incorporates by reference subsections 2116.6 through 2116.9. Subsection 2116.5 states:

Except as provided in § 2117.9, if approved by the Board of Zoning Adjustment pursuant to § 3104 for special exceptions, open parking spaces accessory to any building or structure may be located anywhere on the lot upon which the building or structure is located, or elsewhere, except in the case of a one-family dwelling, *in accordance with § § 2116.6 through 2116.9.* (11 DCMR § 2116.5). (emphasis added)

Because subsection 2116.5 incorporates by reference subsections 2116.6 through 2116.9, the Applicant, in satisfying the requirements of subsection 2116.5 thereby had to satisfy the requirements of subsections 2116.6 through 2116.9.

² The Board waived its rules by consensus to accept the ANC's late filing of its report into the record so it could be given great weight.

BZA APPLICATION NO. 17926

PAGE NO. 2

(OP) submitted a report in support of the relief sought. (Exhibit 28). At the hearing, the District Department of Transportation (DDOT) testified in support of the application, noting that the agency had met with the Applicant to discuss the loading docks and parking, among other matters. Mr. Chapman Todd, a resident who is an adjacent neighbor to the subject property, originally filed a request for party status (Exhibit 25); however, at the hearing, Mr. Todd withdrew his application for party status and testified as a proponent of the application. Mr. Todd indicated that his support was conditional insofar that he requested that the Board incorporate into its order several conditions contained in the voluntary agreement between the Applicant and ANC.³ A letter of opposition was received from William Vigdor, a neighbor. (Exhibit 30).

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under subsection 2116.5. 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 subsection 2116.5, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 13 – Plans) be **GRANTED AS CONDITIONED**:

1. The Applicant shall install, maintain, and replace, as necessary, a six-foot high wood stockade fence along the entire length of the Lord & Taylor property to the rear of the houses from 4401 through 4447 Harrison Street, N.W.
2. The Applicant shall install, maintain, and replace, as necessary, the evergreen trees shown on the Landscape Plan, Sheet C-102, amended of the plans submitted with the Application, and these evergreen trees shall be between eight and ten feet in height upon installation.

³ In its deliberations the Board conditioned its approval of the application on five conditions contained in section 5 of the ANC resolution and voluntary agreement as well as a sixth condition regarding a covenant running with the land.

BZA APPLICATION NO. 17926

PAGE NO. 3

3. The Applicant shall design the lighting of the parking deck and the surface parking lot behind the existing Lord & Taylor Store so all direct lighting is confined on the surface in accordance with District of Columbia law so as to avoid spillage onto the adjacent properties.
4. The Applicant shall restrict use of the loading docks including trash removal at the Lord & Taylor store and the new building to be built on the Homeplate Lot pursuant to District of Columbia law, which currently restricts that use to the daytime hours of 7:00 a.m. to 9:00 p.m.
5. The Applicant shall provide customers of the future stores on the Homeplate Lot with the same parking privileges as customers of the Lord & Taylor store.
6. As the parking area authorized by this Order provides parking spaces required by the Zoning Regulations, the Applicant shall record in the land records of the District of Columbia and file with the Zoning Administrator, an instrument in the form of a covenant which shall, in whatever detail is legally necessary, ensure the continued usage of the authorized parking area for such required parking, and allow for no other use.

VOTE: 3-0-2 (Peter G. May, Shane L. Dettman, Marc D. Loud to APPROVE. Two Mayoral appointees (vacant) not participating, not voting.)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JUNE 29, 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

BZA APPLICATION NO. 17926

PAGE NO. 4

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 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.

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.

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

Application No. 17927 of The Craftsmen Group, Inc., pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to allow the establishment of office, artisan studio, metal and glass work establishment, under subsection 330.5, in the R-4 District at premises rear of 729 Fairmont Street, N.W. (Square 2885, Lot 59).

HEARING DATE: June 9, 2009
DECISION DATE: June 23, 2009

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) 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 support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2, from the variance requirements of section 330.5. 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 330.5, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

VOTE: 3-0-2 (Peter G. May, Shane L. Dettman and Marc D. Loud to Approve, no other members present or voting)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: June 24, 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.

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

Application No. 17928 of The Craftsmen Group, Inc., pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to allow the establishment of office, artisan studio, metal and glass work establishment, under subsection 330.5, in the R-4 District at premises rear of 775 Fairmont Street, N.W. (Square 2885, Lot 862).

HEARING DATE: June 9, 2009
DECISION DATE: June 23, 2009

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) 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 support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2, from the variance requirements of section 330.5. 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 330.5, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

BZA APPLICATION NO. 17928

PAGE NO. 2

VOTE: 3-0-2 (Peter G. May, Shane L. Dettman and Marc D. Loud to Approve, no other members present or voting)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: June 24, 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.

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

Application No. 17935 of Academy of Education Development, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under subsection 771.2, and a variance from the nonconforming structure provisions under subsection 2001.3, to construct an addition to an elevated pedestrian bridge connecting two office buildings in the C-3-C District at premises 1825 Connecticut Avenue, N.W. (Square 2535, Lot 831).

HEARING DATE: June 23, 2009

DECISION DATE: June 23, 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) 1C, 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 1C, which is automatically a party to this application. The Chair of ANC 1C submitted a letter stating that the ANC had no objection to the Applicant's request for two area variances. (Exhibit 23) The Office of Planning (OP) also submitted a report in support of the application (Exhibit 26).

The Board concludes that the Applicant has met its burden of proof under 11 DCMR § 3103.2 for area variances from 11 DCMR §§ 771.2 and 2001.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the 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. No 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.

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

BZA APPLICATION NO. 17935

PAGE NO. 2

in this case. It is therefore **ORDERED** that the application (pursuant to Exhibit 11 – PLANS) be **GRANTED**.

VOTE: **3-0-2** (William W. Keating, III, Shane L. Dettman, and Marc D. Loud 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: JUNE 29, 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.

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. 17936 of New York University, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, a variance from the off-street parking requirements under subsection 2101.1, and a variance from the loading requirements under subsection 2201, to allow the construction of a nine (9) story dormitory and academic center building in the DD/C-2-C District at premises 1307-1311 L Street, N.W. (Square 247, Lot 103).

HEARING DATE: June 23, 2009

DECISION DATE: June 23, 2009 (Bench Decision)

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6)

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) 2F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2F, which is automatically a party to this application. On June 1, 2009, by unanimous consent, ANC 2F voted to recommend approval of the application and the ANC submitted a written report, dated June 22, 2009, to that effect. The Board, by consensus, accepted the ANC's written report into the record. (Exhibit 27) The Office of Planning (OP) submitted a report in support of the variance relief sought. (Exhibit 26) The District's Fire and EMS Department filed a report indicating that the Fire and EMS Department Commission has no objection to the project, provided construction is in compliance with the International Fire Code (2006 Edition) and all applicable District laws.¹ (Exhibit 23)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to §3103.2, for a variance from the lot occupancy requirements under section 772, a variance from the off-street parking requirements under subsection 2101.1, and a variance from the loading requirements under subsection 2201. Based upon the record

¹ The Board accepted the late filing of the Fire and EMS Department's report into the record.

BZA APPLICATION NO. 17936**PAGE NO. 2**

before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 2500.4, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship 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. 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.

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 11 – Plans) be **GRANTED**.

VOTE: **3-0-2** (Shane L. Dettman, William W. Keating, III, Marc D. Loud, to APPROVE. Two Mayoral appointees (vacant) not participating, not voting.)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JUNE 29, 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.

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

BZA APPLICATION NO. 17936

PAGE NO. 3

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.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-21B**

Z.C. CASE NO. 06-21B

Douglas Development Corporation

2-Year Time Extension for PUD at 6th and L Streets, N.W.

(Square 449, Lots 800, 859, 50 and 51)

June 22, 2009

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on June 22, 2009. At the meeting, the Commission approved a request from Douglas Development Corporation (the "Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Lots 50, 51, 800, and, 859 in Square 449 (the "Subject Property"), pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. The Commission determined that this request was properly before it under the provisions of § 2408.10 of the Zoning Regulations.

FINDINGS OF FACT

1. By Zoning Commission Order No. 06-21, the Commission approved on the Subject Property a PUD and related zoning map amendment, changing the zoning on the Subject Property from DD/R-5-B to DD/C-2-C. The PUD is a residential development consisting of approximately 20 dwelling units, and includes the rehabilitation of the historic James Essex House. The floor area for the dwelling units total approximately 22,047 square feet. The project amenities include a landscaped courtyard and below grade parking.
2. Zoning Commission Order No. 06-21 became effective upon its publication in the *D.C. Register* ("DCR") on September 28, 2007. Pursuant to Condition No. 10 of that order and 11 DCMR § 2408.8, the Commission's approval is valid for a period of two years. If no application for a building permit or motion for time extension is filed within that timeframe, the PUD expires.
3. At its public meeting on September 28, 2008, the Commission adopted Order No. 06-21A, which approved a reduction in the parking for the project from 10 to nine spaces, but did not extend the PUD approval. With this exception of the reduction in parking spaces, the PUD has not changed in any form from the original approval.
4. By letter dated and received by the Commission on May 12, 2009, the Applicant filed a request to extend the validity of the PUD approval for a period of two years, such that an application for a building permit must be filed no later than September 28, 2011, and construction must commence no later than September 28, 2012.
5. The letter indicates that the project has experienced delay beyond the Applicant's control. In this case, the Applicant has been unable to obtain sufficient financing for the construction of the approved project. The financial crisis has frozen the credit markets, making construction loans for real estate development projects impossible to obtain.

Z.C. ORDER NO. 06-21B
Z.C. CASE NO. 06-21B
PAGE 2

6. The only other party to this application was Advisory Neighborhood Commission ("ANC") 2C. The Applicant served a copy of its request on ANC 2C, which did not submit a response regarding the Applicant's request.

CONCLUSIONS OF LAW

1. Pursuant to § 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request made before the expiration of the approval. Section 2408.11 provides that an extension of the validity of a PUD may be granted by the Commission for good cause shown if an applicant has demonstrated with substantial evidence one or more of the following criteria: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.
2. The Commission concludes that the Applicant complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
3. The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.
4. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.
5. Section 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.
6. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.

Z.C. ORDER NO. 06-21B
Z.C. CASE NO. 06-21B
PAGE 3

7. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

DECISION

1. In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the application for a two-year time extension of the PUD approved in Zoning Commission Case No. 06-21B.
2. The final PUD approved by the Commission shall be valid until September 28, 2011, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction shall commence no later than September 28, 2012.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. 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, 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 that 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.

On June 22, 2009, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, this Order was **ADOPTED** by the Zoning Commission at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad S. Schlater Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on July 3, 2009.

**OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES
PUBLICATIONS PRICE LIST**

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS (DCMR)

TITLE	SUBJECT	PRICE
1	DCMR MAYOR AND EXECUTIVE AGENCIES (JUNE 2001)	\$16.00
3	DCMR ELECTIONS & ETHICS (MARCH 2007)	\$20.00
4	DCMR HUMAN RIGHTS (MARCH 1995)	\$13.00
5	DCMR BOARD OF EDUCATION (DECEMBER 2002)	\$26.00
6A	DCMR POLICE PERSONNEL (JUNE 2007).....	\$8.00
7	DCMR EMPLOYMENT BENEFITS (JANUARY 1986)	\$8.00
8	DCMR UNIVERSITY OF THE DISTRICT OF COLUMBIA (JUNE 1988).....	\$8.00
9	DCMR TAXATION & ASSESSMENTS (APRIL 1998)	\$20.00
10	DCMR DISTRICT'S COMPREHENSIVE PLAN (PART 1, OCTOBER 2007)	\$70.00
	+ \$10.00 for postage	
10	DCMR PLANNING & DEVELOPMENT (PART 2, MARCH 1994) w/1996 SUPPLEMENT*	\$26.00
11	DCMR ZONING (FEBRUARY 2003).....	\$35.00
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