

THE CESAR CHAVEZ PUBLIC CHARTER SCHOOLS FOR PUBLIC POLICY
NOTICE OF REQUEST FOR PROPOSALS

The Cesar Chavez Public Charter Schools for Public Policy, in accordance with section 2204 (c) (1) (A) of the DC School Reform Act of 1995 (Public Law 104-134), hereby solicits proposals for the following Services at its schools for the 2009-10 school year:

- **Building Superintendent / Engineer**
- **Bus Service for School Trips**
- **Heating, Ventilation and Air Conditioning Maintenance Contract**
- **Janitorial Services**

The Cesar Chavez Public Charter Schools will receive bids from July 17, 2009 to COB July 29, 2009 Attn: Dan Theisen, 709 12th Street, SE, Washington, D.C. 20003.

Additional specifications will be outlined in the RFP and may be obtained by emailing dan.theisen@chavezschools.org or calling 202-352-7878.

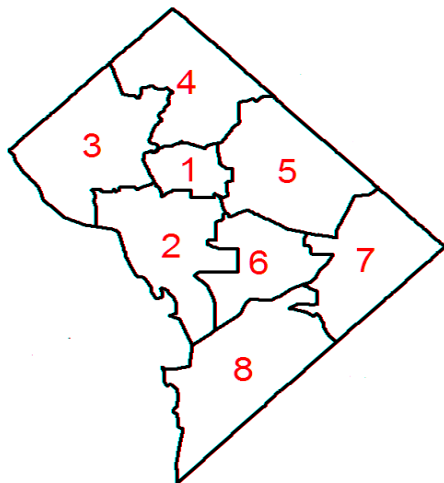
D.C. BOARD OF ELECTIONS AND ETHICS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE SUMMARY

Party Totals and Percentages by Ward for the period ending June 30, 2009

WARD	DEM	REP	STG	N-P	OTH	TOTALS
1	35,547	2,604	800	9,764	202	48,917
2	28,647	5,429	336	9,551	167	44,130
3	34,173	7,767	352	10,098	155	52,545
4	46,375	2,701	598	8,499	178	58,351
5	45,913	2,011	567	7,152	171	55,814
6	38,187	5,056	509	8,438	172	52,362
7	45,400	1,511	469	6,375	124	53,879
8	37,286	1,369	495	6,201	127	45,478
TOTALS	311,528	28,448	4,126	66,078	1,296	411,476
<i>TOTAL Percentage (by party)</i>	75.7%	6.9%	1.0%	16.1%	0.3%	100%

Wards



D.C. BOARD OF ELECTIONS AND ETHICS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

PRECINCT STATISTICS

Ward 1

For the Period Ending: June 30, 2009

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
20	1,252	44	14	313	11	1,634
22	2,747	246	38	691	14	3,736
23	1,935	126	62	531	9	2,663
24	2,057	213	29	577	16	2,892
25	3,427	417	75	987	8	4,914
35	2,892	205	64	823	13	3,997
36	3,337	229	75	889	21	4,551
37	2,386	127	50	589	12	3,164
38	2,286	121	66	595	17	3,085
39	3,253	218	99	877	22	4,469
40	3,139	219	98	974	19	4,449
41	2,462	149	57	838	19	3,525
42	1,465	56	32	400	7	1,960
43	1,411	72	26	291	6	1,806
136	768	123	8	232	2	1,133
137	730	39	7	157	6	939
TOTALS	35,547	2,604	800	9,764	202	48,917

D.C. BOARD OF ELECTIONS AND ETHICS
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PRECINCT STATISTICS

Ward 2

For the Period Ending: June 30, 2009

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
2	403	121	5	247	6	782
3	1,244	397	8	541	8	2,198
4	1,278	393	7	567	7	2,252
5	2,096	724	21	781	9	3,631
6	2,485	1,144	38	1,477	22	5,166
13	1,177	258	5	411	2	1,853
14	2,541	407	31	823	10	3,812
15	2,751	291	23	788	19	3,872
16	2,691	344	32	643	13	3,723
17	3,745	565	45	1,152	38	5,545
18	3,168	195	54	681	11	4,109
21	1,326	90	26	290	6	1,738
129	1,750	297	17	625	5	2,694
141	1,992	203	24	525	11	2,755
TOTALS	28,647	5,429	336	9,551	167	44,130

D.C. BOARD OF ELECTIONS AND ETHICS

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PRECINCT STATISTICS

Ward 3

For the Period Ending: June 30, 2009

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
7	1,062	401	16	454	4	1,937
8	2,228	720	26	705	9	3,688
9	1,048	591	7	398	6	2,050
10	1,868	567	16	678	5	3,134
11	3,208	848	38	1,254	22	5,370
12	486	202	3	190	5	886
26	2,532	395	31	767	11	3,736
27	2,281	287	20	497	8	3,093
28	2,399	736	32	876	14	4,057
29	1,302	290	15	389	5	2,001
30	1,261	308	16	278	5	1,868
31	2,277	426	18	579	9	3,309
32	2,574	445	24	601	12	3,656
33	2,720	390	35	705	11	3,861
34	3,028	488	24	898	17	4,455
50	1,946	317	13	398	11	2,685
138	1,953	356	18	431	1	2,759
TOTALS	34,173	7,767	352	10,098	155	52,545

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Ward 4

For the Period Ending: June 30, 2009

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
45	2,105	91	40	367	11	2,614
46	2,948	106	33	524	13	3,624
47	2,603	170	41	669	18	3,501
48	2,700	153	42	521	10	3,426
49	691	35	18	167	2	913
51	3,104	608	32	623	7	4,374
52	1,236	293	5	241	2	1,777
53	1,149	89	15	257	4	1,514
54	2,244	116	35	449	9	2,853
55	2,626	95	35	409	14	3,179
56	3,012	102	34	642	16	3,806
57	2,524	89	31	436	15	3,095
58	2,249	62	31	360	4	2,706
59	2,564	101	29	389	10	3,093
60	1,958	88	23	648	7	2,724
61	1,574	61	20	274	3	1,932
62	3,141	176	36	369	7	3,729
63	2,973	115	59	522	11	3,680
64	2,295	68	15	300	8	2,686
65	2,679	83	24	332	7	3,125
TOTALS	46,375	2,701	598	8,499	178	58,351

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PRECINCT STATISTICS

Ward 5

For the Period Ending: June 30, 2009

<i>PRECINCT</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
19	3,258	165	57	662	14	4,156
44	2,658	244	39	552	17	3,510
66	4,511	137	36	477	17	5,178
67	2,965	116	25	368	11	3,485
68	1,833	150	29	347	6	2,365
69	2,166	81	12	255	11	2,525
70	1,530	78	21	250	5	1,884
71	2,436	77	32	351	9	2,905
72	4,073	127	30	621	12	4,863
73	1,861	111	31	315	8	2,326
74	3,663	170	54	645	8	4,540
75	2,587	100	47	481	10	3,225
76	885	50	12	175	3	1,125
77	2,655	93	35	409	11	3,203
78	2,439	61	23	373	6	2,902
79	1,803	57	23	277	5	2,165
135	2,535	147	44	403	15	3,144
139	2,055	47	17	191	3	2,313
TOTALS	45,913	2,011	567	7,152	171	55,814

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PRECINCT STATISTICS

Ward 6

For the Period Ending: June 30, 2009

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
1	2,432	124	39	516	8	3,119
81	4,068	277	52	692	15	5,134
82	2,142	195	21	419	11	2,788
83	2,668	192	32	494	14	3,400
84	1,774	372	31	426	7	2,610
85	2,416	517	24	573	9	3,539
86	1,934	253	31	411	8	2,637
87	2,597	204	33	443	16	3,293
88	1,844	298	22	367	3	2,534
89	2,265	644	30	627	9	3,575
90	1,378	251	14	345	10	1,998
91	3,368	301	48	710	11	4,438
127	3,438	267	60	726	16	4,507
128	1,702	172	21	459	8	2,362
130	701	308	11	246	2	1,268
131	461	81	3	107	4	656
142	1,117	165	12	269	8	1,571
143	1,852	435	25	608	13	2,933
TOTALS	38,187	5,056	509	8,438	172	52,362

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PRECINCT STATISTICS

Ward 7

For the Period Ending: June 30, 2009

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
80	1,297	57	12	208	6	1,580
92	1,513	55	17	227	8	1,820
93	1,388	46	14	217	6	1,671
94	1,810	72	17	215	2	2,116
95	1,536	52	22	261	2	1,873
96	2,106	72	29	321	3	2,531
97	1,247	47	15	187	4	1,500
98	1,742	55	21	225	8	2,051
99	1,311	45	12	211	6	1,585
100	1,684	50	17	251	2	2,004
101	1,604	43	18	175	5	1,845
102	2,206	60	22	282	7	2,577
103	3,242	99	30	504	13	3,888
104	2,357	70	30	340	8	2,805
105	1,996	65	25	277	5	2,368
106	2,897	92	27	402	5	3,423
107	1,573	57	17	243	2	1,892
108	1,147	45	7	123	2	1,324
109	1,000	38	5	100	1	1,144
110	3,812	134	39	455	12	4,452
111	2,071	56	29	349	6	2,511
112	1,872	62	15	244	4	2,197
113	2,079	61	14	260	6	2,420
132	1,910	78	15	298	1	2,302
TOTALS	45,400	1,511	469	6,375	124	53,879

D.C. BOARD OF ELECTIONS AND ETHICS

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PRECINCT STATISTICS

Ward 8

For the Period Ending: June 30, 2009

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
114	2,745	103	38	479	21	3,386
115	2,474	88	30	532	6	3,130
116	3,382	121	45	555	11	4,114
117	1,371	49	11	227	4	1,662
118	2,317	89	39	352	4	2,801
119	2,393	125	44	454	8	3,024
120	1,413	39	11	272	3	1,738
121	2,896	97	46	493	5	3,537
122	1,681	45	24	254	4	2,008
123	2,089	117	33	382	6	2,627
124	2,293	62	29	332	4	2,720
125	3,805	121	43	565	14	4,548
126	3,278	149	38	605	18	4,088
133	1,336	43	12	174	6	1,571
134	1,983	59	31	260	7	2,340
140	1,830	62	21	265	6	2,184
TOTALS	37,286	1,369	495	6,201	127	45,478

DISTRICT DEPARTMENT OF THE ENVIRONMENT

PUBLIC NOTICE

Notice of Cancellation of Stakeholder Meetings on Soil Erosion and Sediment Control and Stormwater Management Regulations

On June 5, 2009, the District Department of the Environment (DDOE) published notice at 56 *D.C. Register* 4418 of four meetings to receive comments from stakeholders and answer questions regarding draft proposed amendments to the District's Soil Erosion and Sediment Control and Stormwater Management Regulations.

On June 15 and July 1, 2009, DDOE held the first two of these four scheduled meetings to consider implementation strategies and seek stakeholder input in developing stormwater regulations. These stakeholder meetings provided the public a chance to comment on DDOE's draft proposed stormwater regulations. DDOE has received some extremely useful and substantial comments on the draft proposed regulations. It appeared at the conclusion of the second meeting that persons who were interested in attending and providing comment had done so, and that there was no further comment to be provided. Accordingly, DDOE has decided to cancel the remaining stakeholder meetings pending a review of the comments received to date. Should additional questions arise after this review, DDOE may organize another stakeholder meeting.

Interested stakeholders may review a draft of DDOE's soil erosion and sediment control and stormwater management regulatory proposal, as well as meeting summaries and comments from the June 15 and July 1 stakeholder meetings. These materials are available from DDOE's website at <http://ddoe.dc.gov/draftstormwaterregs>. Written comments may still be provided until Wednesday, July 29, 2009. Written comments should be clearly marked "Stormwater Regulations" and filed with DDOE, Watershed Protection Division, 51 N Street NE, 5th Floor, Washington, DC 20002, Attention Ms. Sheila Besse, or emailed to sheila.besse@dc.gov. Ms. Besse may also be contacted by phone at 202-535-2244, if there are further questions on the stakeholder process.

DISTRICT OF COLUMBIA HISTORIC PRESERVATION OFFICE**HISTORIC PRESERVATION FUND
SUBGRANTING ASSISTANCE PROGRAM****FY 2010 Grant-In-Aid Announcement
Request for Applications
General Solicitation Notification**

The District of Columbia's Historic Preservation Office (HPO) announces the availability of matching grant funds from the Federal Historic Preservation Fund (HPF) for activities consistent with priorities established under the DC Historic Preservation Plan. The DC HPF subgranting program is made possible through an annual appropriation awarded by the National Park Service.

The DC State Historic Preservation Office is currently soliciting applications for the Open-Project Community competitive selection process. In most cases, subgrant funding applied for must be matched by the applicant at 40 percent of the total cost of the project. In FY 2010, total grant funds estimated available for subgrants and contracts is \$52,000, ten percent of the estimated federal grant award to the District of Columbia from the National Park Service. The deadline for receipt of any and all applications is **5:00 pm, Tuesday, September 1, 2009**. All applications should be mailed or delivered to the District of Columbia Historic Preservation Office, 2000 14th Street, NW, Suite 401, Washington, DC 20009, and must fully comply with submission guidelines specified in the DC Historic Preservation Fund Grants Manual (available from the DC Historic Preservation Office and on the office website at <http://planning.dc.gov>).

Eligible applicants for HPF subgrant awards include nonprofit organizations, private individuals or groups working in partnership with nonprofits, institutions of higher learning, and other agencies of the Government of the District of Columbia.

Eligible activities include community surveys, National Register nominations, structural assessments of registered properties, and outreach activities including publications and educational events. Priority will be given to submissions that relate to the District of Columbia Historic Preservation Office Annual Work Plan for FY 2010 and the Historic Preservation Plan for the District of Columbia 2008-2012 (both available from the DC Historic Preservation Office and on the office website at <http://planning.dc.gov>). Eligible project dates are January 1, 2010 through September 30, 2010 (9 months) and April 1, 2010 and September 30, 2011 (18 months).

All grants will be reviewed using a standardized rating system based on the merits of the project, the ability of the applicant to complete the project, availability of funding, and distribution of project type and location. Final grant award decisions will be made by the DC State Historic Preservation Officer and approved by the National Park Service. Letters of support from ANCs and neighborhood organizations will be factors considered during the review process.

An original and two (2) copies of the application and proposal must be submitted for each project proposed. Additional information on the grant application procedures and submission requirements may be obtained from the DC Historic Preservation Office at 2000 14th Street, NW, Suite 401, Washington, DC 20009, or at (202) 442-8835 (phone) or (202) 442-7638 (fax).

HOWARD ROAD ACADEMY**REQUEST FOR PROPOSALS****PREPLATED FOOD SERVICE CONTRACT**

The Howard Road Academy and its management firm, Mosaica Education, Inc., is advertising the opportunity to bid on the delivery of breakfast, lunch, and 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 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, mea quality, etc. may be obtain from Dianna Washington at 2005 Martin Luther King Ave SE, Washington DC 20020. Bids must be received by August 3, 2009 no later than **12:00 noon**. If you have questions please e-mail DWashington@howardroadacademy.org

CUSTODIAL SERVICES

The Howard Road Academy and its management firm, Mosaica Education, Inc., invite proposals for procurement of custodial services for 2009-10. Proposals are to be received by Howard Road Academy's Business Office Mosaica Education, 2005 Martin Luther King Jr. Ave. SE Washington DC 20020 on **August 3rd** no later than **2:00 pm**. Bid specifications may be obtained at the school, 2005 Martin Luther King Jr. Ave SE, or by contacting LaTonya Henderson , Tel. 202-610-5713. Any questions regarding this bid must be submitted in writing to Lhenderson@Howardroadacadmy.org before the RFP deadline.

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

Notice is hereby given that the following named persons have been newly appointed as Notaries Public in and for the District of Columbia, effective on or after August 1, 2009.

Comments on these appointments should be submitted, in writing, to Naomi Shelton, Administrator, Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on July 24, 2009. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

D.C. Office of the Secretary
Appointments of Notaries PublicEffective: August 1, 2009
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Abdul-Wali	Mona	Precision Systems, Incorporated 4301 Connecticut Avenue, NW, #106	20008
Alvarenga	Jim E.	DC Department of Employment Services/Office of Wage-Hour 64 New York Avenue, NE, Suite 3105	20002
Aponte-Smith	Dena	American Insurance Association 2101 L Street, NW, Suite 400	20037
Argao	Judith B.	C T Corporation System 1015 15th Street, NW, Suite 1000	20005
Atkins	Phylicia D.	Lafayette Federal Credit Union 1300 Pennsylvania Avenue, NW, Room C-1.80	20523
Atwell	Rita	Chadbourne & Parke, LLP 1200 New Hampshire Avenue, NW	20036
Batchelor	Thomas C.	Wright & Batchelor, LLP 1901 18th Street, NW	20009
Bates	Tamela M.	ACS Communications 1710 Good Hope Road, SE	20020
Bettencourt	Linda M.	Beveridge & Diamond, PC 1350 I Street, NW, Suite 700	20005
Bridgett	Wanda M.	Ballard Spahr Andrews & Ingersoll, LLP 601 13th Street, NW, Suite 1000 South	20005
Brown	Sharon	Williams & Connolly LLP 725 12th Street, NW	20005
Bryant	LaTonya T.	DC Child & Family Services Agency 400 6th Street, SW	20024
Burke	Myra F.	Steptoe & Johnson, LLP 1330 Connecticut Avenue, NW	20036

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Butler	Aquinos	The George Washington University 2121 I Street, NW, #601	20052
Canty	Allison S.	Perseus Realty Capital, LLC 1750 H Street, NW Suite 500	20006
Carter	Margaret A.	Asbury Federal Credit Union 926 11th Street, NW	20001
Casalbore	Nicholas L.	Washington Legal Clinic for the Homeless 1200 U Street, NW, 3rd Floor	20009
Currie	Ingrid	Children's Choice 1223 Brentwood Road, NE	20018
Daley	Jan	Dewey & LeBoeuf LLP 1101 New York Avenue, NW	20005
Davis	Catherine	Smith, Currie & Hancock LLP 1901 Pennsylvania Avenue, NW, Suite 601	20006
De Leon	Xiomara	Centronia 1420 Columbia Road, NW	20009
D'Haiti	Valencia R.	Department of Justice/Environmental Enforcement Section P.O. Box 7611	20044
Drew	Lisa	Citizens for Responsibility and Ethics in Washington 1400 Eye Street, NW, Suite 450	20005
Dupree	Justine V.	Stewart Title Group 11 Dupont Circle, NW, Suite 750	20036
Esser	Alexandra	Law Media Group, Incorporated 1343 L Street, NW	20005
Euill	Deonka L.	TD Bank 605 14th Street, NW	20005
Evangelista	Teresa M.	Bank Fund Staff Federal Credit Union 1818 H Street, NW	20433

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Fenstermacher	Amy C.	Stewart Title Group 11 Dupont Circle, NW, Suite 750	20036
Fish	Kathryn S.	Wiley Rein, LLP 1776 K Street, NW	20006
Fitzgerald	Lois J.	Foundation For Home and Community 1012 14th Street, NW, 14th Floor	20005
Foster-EL	Valencia	Self/Metropolitan Police Department 902 Girard Street, NE	20017
Franklin	Patrice M.	The George Washington University 800 21st Street, NW	20052
Gessner	William J.	OREXCO 1667 K Street, NW, Suite 610	20006
Gettings	Christine	American University 4400 Massachusetts Avenue, NW	20016
Grainger	Jennifer O.	United General Contractors, Incorporated 606 B Rhode Island Avenue, NE	20002
Grantham	Cathy A.	Hillwood Estate, Museum & Gardens 4155 Linnean Avenue, NW	20008
Green	Taneshea C.	The Adams National Bank 1501 K Street, NW	20005
Hall	Tonica K.	DVA Federal Credit Union 810 Vermont Avenue, NW, RM 831	20420
Harper-Simon	Gloria C.	Self 1425 4th Street, SW, Suite A-604	20024
Harris	Tanika V.	US Department of Agriculture 1400 Independence Avenue, SW, RM 2445	20250
Hewes	Diane	Wilmer Cutler Pickering Hale and Dorr LLP 1875 Pennsylvania Avenue, NW	20006

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Hill	Leah M.	DC Superior Court 500 Indiana Avenue, NW	20001
Hill	Anna Davis	United Planning Organization 33 N Street, NE, 2nd Floor	20002
Hilton	Jeronda	PNC Bank 1100 H Street, NW	20005
Howard	Geraldine	Self 3800 V Street, SE, Unit 202	20020
Jackson	Erin	Deputy Mayor for Planning and Economic Development 1350 Pennsylvania Avenue, NW, Suite 317	20004
Johnson	Debra	National Railroad Passenger Corporation (Amtrak) 10 G Street, NE, Suite 3E-408	20002
Kelly	Eliza F.	National Railroad Passenger Corporation (Amtrak) 60 Massachusetts Avenue, NE	20002
Kennedy	R. Terri	Burson-Marsteller 1110 Vermont Avenue, NW, Suite 1200	20005
Konschak	Kimberly J.	Nelson, Mullins, Riley & Scarborough, LLP 101 Constitution Avenue, NW, 9th Floor	20001
Koonce	Kara	The Ley Group 3704 Macomb Street, NW, Suite 4	20016
Koonce	Ameera	PNC Bank 1100 25th Street, NW	20037
Lane	Melissa Y.	Self 1336 Longfellow Street, NW	20011
Laughlin, Jr.	James W.	For The Record 2300 M Street, NW, Suite 800	20037
Lehman	Anthony J.	United Press International 1133 19th Street. NW, Suite 800	20036

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Leigh	Lyla M.	Fonkoze USA 50 F Street, NW, Suite 810	20001
Mackey	Brian D.	LAD Reporting Company 1325 G Street, NW, Suite 200	20005
March	Nita	Georgetown University Hotel and Conference Center 3800 Reservoir Road, NW	20057
McFadgen	Reginald E.	Barnes, Richardson & Colburn 11 Dupont Circle, NW, Suite 500	20036
Minus	Reginald C.	Minus & Associates, Incorporated 6230 3rd Street, NW, #15	20011
Miski	Ahmad	Arab American Chamber of Commerce 1050 17th Street, NW, Suite 600	20036
Mitchell	Bridgette	Sisters In Christ & So Much More 712 1/2 7th Street, SE	20003
Munizaga	Aimee A.	Source Office Suites 1050 17th Street, NW, Suite 600	20036
Murphy	Jessica	Gratis Internet LLC dba Social Cash 1825 I Street, NW, Suite 401	20006
Murphy	Alicia C.	DVA Federal Credit Union 810 Vermont Avenue, NW, RM 831	20420
Neal	Amanda M.	Griffin & Murphy, LLP 1912 Sunderland Place, NW	20036
O'Hora	Elaine A.	Williams & Jensen, PLLC 1155 21st Street, NW, Suite 300	20036
Ojo	Patchebole	Alafia Property Management 300 50th Street, SE, #203	20019
Owens	Andrea L.	William C. Smith and Company 1100 New Jersey Ave., SE, Suite 1000	20003

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Pantoja	Sergio	US Coast Guard 2100 2nd Street, SW	20592
Parrott-Heath	Lisa	Reynolds & Associates, Incorporated 1430 G Street, NE	20002
Pascoe	Marian M.	The George Washington University/Sr. VP and General Counsel 2100 Pennsylvania Avenue, NW, Suite 250	20052
Peters-Haynes	Javonne	Chantelle's Quality Child Care Center, Incorporated 4221 7th Street, NW	20011
Pickover	Nancy Lynn	Weiner Brodsky Sidman Kider PC 1300 19th Street, NW, 5th Floor	20036
Pike	Julie S.	International City/County Management Association (ICMA) 777 North Capitol Street, NE, Suite 500	20002
Plattner	Daniel J.	SettlementCorp 5301 Wisconsin Avenue, NW, Suite 710	20015
Portillo	Luisa B.	DC Office of Human Rights 441 4th Street, NW, Suite 570 North	20001
Raymond	Michelle	Morgan, Stanley, Smith, Barney, LLC 1747 Pennsylvania Avenue, NW, Suite 500	20006
Roberts	Frances J.	The Jackson Investment Company 125 Yuma Street, SE, Suite 101	20032
Robertson	Kathleen M.	Civil War Preservation Trust 1331 H Street, NW, Suite 1001	20005
Robertson	Vanessa	Council on Foreign Relations 1777 F Street, NW	20006
Scott	Cassandra M.	Mount Carmel Miracle Temple of God, Inc. 609 Kennedy Street, NW	20011
Shingleton	Lorna J.	Patton Boggs, LLP 2550 M Street, NW	20037

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Sikora	Amy E.	Olender Reporting 1522 K Street, NW, Suite 720	20005
Simpkins	Marcia C.	Wells Fargo Advisors 1133 Connecticut Avenue, NW, 9th Floor	20036
Skinner	Lynn S.	Georgetown University Hotel and Conference Center 3800 Reservoir Road, NW	20057
Smith	Paul J.	People for the Ethical Treatment of Animals (PETA) 1536 16th Street, NW	20036
Snyder	Shaun	Banner & Witcoff, Ltd. 1100 13th Street, NW, Suite 1200	20005
Stallion	Vivian A.	Department of Health and Human Services 200 Independence Avenue, SW, RM 639G	20201
Sykes	Ronald O.	High Road Primary School 1248 Taylor Street, NW	20011
Taylor	Karen A.	Kirkland & Ellis, LLP 655 15th Street, NW, Suite 1200	20005
Tesfaye	Amsale	Fannie Mae 3900 Wisconsin Avenue, NW	20016
Thoman	Tina	International Brotherhood of Electrical Workers 900 7th Street, NW	20001
Thompson	Denise M.	Self 2617 24th Street, NE	20018
Thompson	Jackie C.	Dykema Gossett 1300 I Street, NW, Suite 300	20005
Thompson	Melanie N.	Gilbert Oshinsky, LLP 1100 New York Avenue, NW, Suite 700	20005
Tom	Lena	DVA Federal Credit Union 810 Vermont Avenue, NW, RM C27	20420

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Turner	Candace A.	US Commodity Futures Trading Commission 1155 21st Street, NW	20581
Turner-Jones	Vernetta	Self 515 46th Street, SE, #1	20019
Vaccaro	Brenda S.	Jones Day 51 Louisiana Avenue, NW	20001
Wallace	Gilda J.	Sandler, Travis & Rosenberg, PA 1300 Pennsylvania Avenue, NW	20004
Webster	Susan R.	Self 3400 24th Street, NE	20018
Webster	William R.	Self 3400 24th Street, NE	20018
Wedlock	Teah R.	US Air Force- Office of the Staff Judge Advocate 20 MacDill Boulevard, SE, Suite 350 Bolling AFB	20032
Withrow	Amber C.	US Customs and Border Protection 1300 Pennsylvania Avenue, NW, Room B155	20229
Woodland	Connie M.	Far Southeast Family Strengthening Collaborative 2041 Martin Luther King Jr. Avenue, SE, Suite 304	20020
Yocum	Joyce M.	US Air Force- Office of the Staff Judge Advocate 20 MacDill Boulevard, SE, Suite 325 Bolling AFB	20032
Young	Alease H.	Self 5815 8th Street, NE	20011
Young	Karen C.	LAD Reporting Company 1325 G Street, NW, Suite 200	20005
Young	Harriett G.	Ballard Spahr Andrews & Ingersoll, LLP 601 13th Street, NW, Suite 1000 South	20005

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17848 of Anne M. Holbrook, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 403, a variance from the rear yard requirements under § 404, and a variance from the nonconforming structure provisions under § 2001.3 to allow an addition to an existing one-family row dwelling in the R-4 district at premises 1515 Massachusetts Avenue, S.E. (Square 1072-S, Lot 10).

HEARING DATE: December 9, 2009
DECISION DATE: December 9, 2009

DECISION AND ORDER

This application was submitted June 30, 2008 by Anne Holbrook, the owner of the property that is the subject of the application (“Applicant”). Following a public hearing, the Board voted 5-0-0 on December 9, 2009 to deny the application.

PRELIMINARY MATTERS

Application. The application was filed pursuant to 11 DCMR § 3103 for area variances from the maximum lot occupancy requirement under § 403 and the minimum rear yard requirement under § 404 to allow construction of an addition to an existing row dwelling in the R-4 district in Square 1072-S, Lot 10. The self-certified application was later amended to add a request for an area variance from the nonconforming structure provisions under § 2001.3.

Notice of Application and Notice of Public Hearing. By memoranda dated July 2, 2008, the Office of Zoning sent notice of the application to the Office of Planning; the District Department of Transportation; the Councilmember for Ward 6; Advisory Neighborhood Commission (“ANC”) 6B, the ANC for the area within which the subject property is located; and the single-member district ANC 6B08.

A public hearing was scheduled for December 2, 2008. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on September 18, 2008 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 6B. Notice was published in the D.C. Register on September 26, 2008 (55 DCR 9986). The hearing was continued to and completed on December 9, 2008.

Requests for Party Status. In addition to the Applicant, ANC 6B was automatically a party in this proceeding. There were no additional requests for party status.

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Applicant's Case. The Applicant requested variance relief from lot occupancy, rear yard, and nonconforming structure requirements to allow construction of a two-story rear addition to a one-family row dwelling. (The Applicant also planned to construct a third-story addition on a portion of the row dwelling, a project that did not require zoning relief.) The Applicant explained her proposal to enlarge the row dwelling, which she described as extraordinarily small, to meet her need for increased living space, particularly since her fiancé moved into the house, and to add environmental features, especially a green roof on a portion of the dwelling's roof. According to the Applicant, her row dwelling was one of only two owner-occupied houses in a row of eight similar small row dwellings, and the other owner-occupied house had already been enlarged. The Applicant testified that the existing rear yard was not needed because the subject property had a large open space in the front yard, and was not usable due in part to criminal activity in the alley behind the subject property, and that construction of the planned rear addition would help improve safety in the alley by increasing visibility.

The Applicant contended that several characteristics made the subject property exceptional and made it difficult for the owner to comply with the Zoning Regulations, including that the lot was "exceptionally small," at one-third the minimum size required in the R-4 district; the maximum permitted lot occupancy on the site would allow "very small house only two rooms deep," which was "too small for a family or even more than one person"; the lot was "exceptionally narrow," resulting in difficulty in creating functional rooms; any rear addition to the house would create a nonconforming rear yard; and the house did not have a basement. The Applicant also asserted that granting the requested relief would not cause substantial detriment to the public good, because the rear addition would be visible only from the rear alley, and would not generate traffic, noise, or light, and because neighboring properties had already been enlarged by similar additions.

Government Reports. By report dated November 25, 2008 and through testimony at the public hearing, the Office of Planning ("OP") recommended denial of the application. OP objected to the degree of variance relief requested – an increase in lot occupancy from 60 percent, the maximum permitted as a matter of right, to 90 percent, and a reduction of the required rear yard from 20 feet to five feet – and indicated its preference for a design that would conform to special exception criteria under § 223. OP did not agree that the subject property was exceptionally small, noting that half of the properties in the same square had lot areas between 600 square feet (the size of the Applicant's lot) and 700 square feet. OP also testified that the strict application of the Zoning Regulations would not cause practical difficulty, since a third-story addition could be built as a matter of right and a rear addition could be designed consistent with the requirements for special exception relief pursuant to § 223. OP concluded that approval of the requested variances would be contrary to the intent of the Zoning Regulations and possibly detrimental to the public good, because allowing an addition, with its resulting significant increase in lot occupancy, to a property that was similar to many others on the same square could lead to greatly increased density on the square, with lot occupancies at levels more appropriate in a commercial zone than in a residential area. OP also suggested that the Applicant could

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investigate the possibility of closing the rear alley, which is not used for vehicular traffic or parking, as a means of increasing the size of the Applicant's lot.

ANC Report. At a regularly noticed public meeting held November 11, 2008 with a quorum present, ANC 6B voted 5-3 to support the application. By letter dated November 12, 2008, ANC 6B indicated that its vote was based on its belief that "the strict application of the regulations would result in peculiar and exceptional practical difficulties or exceptional and undue hardship upon the owner."

Persons in support. The Board heard testimony and received letters from persons in support of the application who commented favorably on the Applicant's project. The persons in support included near neighbors of the subject property, including one who also hoped to construct a rear addition to enlarge her row dwelling. The Board also received a letter in support of the application from Ed Brandt, sector lead in Landscaping and Structural Pest Management at the Environmental Protection Agency, who expressed support for the Applicant's plan to install a green roof on the row dwelling.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is a rectangular parcel located on the north side of Massachusetts Avenue, S.E. (Square S-1072, Lot 10). The property is approximately 12 feet wide and 50 feet deep, with an area of approximately 603 square feet.
2. The subject property is located in a generally triangular-shaped square bounded by Massachusetts Avenue on the south, 15th Street on the west, Independence Avenue on the north, and 16th Street on the east. Two public alleys are located near the subject property. One alley runs generally north-south between Independence Avenue, where the alley is 24 feet wide, to Massachusetts Avenue, where it narrows to 12 feet in width. The second alley runs generally east-west from its intersection with the first alley into the interior of the square. The width of this alley ranges from approximately 9.7 feet to approximately 20 feet. The second alley abuts the rear lot line of the subject property at a point where the alley is relatively narrow and turns slightly, impeding visibility.
3. The subject property is improved with a one-family row dwelling built around 1902. The two-story row dwelling has a floor area of 710 square feet, and is one of eight substantially identical dwellings in the row, each located on a similarly sized lot. The remainder of the square is developed with several similar two-story row dwellings and two commercial buildings. Some of the row dwellings have been enlarged previously through the construction of rear additions.
4. The row dwelling is set back approximately 30 feet from Massachusetts Avenue.

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5. The site is not located within a historic district.

The Applicant's Project

6. The Applicant proposed to enlarge the existing row dwelling by constructing a one-story addition to create a third floor for a portion of the house as well as a two-story addition, with a roof deck, at the rear of the dwelling. The proposed additions would increase the floor area of the house to 1,265 square feet.
7. The new third story would create a new family room, approximately 17 feet deep by 12 feet wide (approximately 200 square feet in area). The third-floor addition would be set back approximately 12 feet, seven inches from the front of the dwelling so as to minimize its appearance from the street and to create room for installation of a green roof, approximately 12 feet square, in the area between the front of the dwelling and the new third-floor addition. The Applicant may construct the third-story addition as a matter of right.
8. The rear addition would be approximately 15 feet, nine inches deep by 12 feet wide, with a footprint of 188.5 square feet, and would be constructed in the rear yard of the dwelling. The first floor of the new addition would be used to create a dining room and storage space, while the second story would house a new master bedroom and bathroom so that an existing bedroom in the house could be converted to a closet and a laundry facility. A roof deck (approximately 15 feet, nine inches deep by 12 feet wide, and 189 square feet in area) would be built on the roof of the new two-story rear addition behind the third-story family room addition.

Zone Plan

9. The subject property is located in the R-4 zone district, which is designed to include those areas now developed primarily with row dwellings. 11 DCMR § 330.1.
10. The subject property is nonconforming with respect to lot area, at approximately 603 square feet, where a minimum of 1,800 square feet is required, and with respect to lot width, at 12 feet, where a minimum of 18 feet is required. 11 DCMR § 401.3.
11. The proposed rear addition would increase the lot occupancy of the subject property from 58.8 percent to 90 percent. A maximum lot occupancy of 60 percent is permitted in the R-4 zone. 11 DCMR § 403.2.
12. The existing rear yard is 20 feet, six inches deep. After construction of the rear addition, the rear yard would be five feet deep. A minimum rear yard of 20 feet is required in the R-4 zone. 11 DCMR § 404.1.

BZA APPLICATION NO. 17848**PAGE NO. 5****CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks area variances from the lot occupancy requirement under § 403, the rear yard requirement under § 404, and the nonconforming structure provisions under § 2001.3 to allow construction of a rear addition to an existing one-family row dwelling in the R-4 district at 1515 Massachusetts Avenue, S.E. (Square 1072-S, Lot 10). The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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. 11 DCMR § 3103.2.

The Applicant contended that the subject property was exceptional due to its small lot area and narrow configuration, as well as its position abutting a dead-end rear alley that created a location for criminal activity. The Board was not persuaded that the Applicant’s property is faced with an “extraordinary or exceptional situation or condition” within the meaning of the Zoning Act. The subject property – while relatively small in terms of lot area and width compared to other properties located in the R-4 zone, including some other row dwellings in the same neighborhood – is one of a row of eight dwellings, where each house is substantially identical to the others and all are located on similarly sized lots. In addition, several other properties in the same square are similar two-story row dwellings, and according to the Applicant, only one residential lot on the square meets the minimum area and width requirements of the R-4 district. The nonconforming size of the subject property does not constitute an exceptional circumstance, especially when other properties in the immediate vicinity are similarly situated.

The Board was not persuaded that practical difficulties faced by the Applicant result from the strict application of the Zoning Regulations, rather than from changes in the Applicant’s use of the property and her desire to enlarge the house by constructing a rear addition of the proposed size. The Applicant can enlarge the house without zoning relief through the construction of a larger third-story addition. The planned addition would create one room on the third floor while also providing for a green roof at the front of the house and a roof deck at the rear. The Board acknowledges the Applicant’s desires to set back the planned third-story addition so as to minimize its visibility from the street and to create room for installation of a green roof, but these choices by the Applicant were not mandated by the Zoning Regulations or other legal requirements. The Applicant could also seek a special exception under § 223 to allow construction of a rear addition, albeit one not as large as that proposed in this application. According to OP, with special exception approval, the Applicant could build a rear addition with a depth of about 5.6 feet. Even with the proposed third-story setback (a design feature strongly supported by OP to minimize the visual impact of a third-floor addition), a dwelling of over

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1,115 square feet would be possible – about 150 square feet less than the Applicant proposed in this proceeding. The Board also agrees with OP that the Applicant could file an application with the Surveyor of the District of Columbia requesting the Council of the District of Columbia to enact legislation to close the rear alley. If the Council did so, half of the alley abutting the property would be added to the Subject Property's lot, which would allow for a larger rear addition without requiring the same degree of zoning relief.

As proposed in this application, the planned rear addition would require substantial variance relief that would create two additional nonconforming elements at the subject property by allowing a rear yard of only five feet where a minimum of 20 feet is required, as well as lot occupancy of 90 percent where a maximum of 60 percent is allowed as a matter of right and 70 percent may be permitted by special exception. The Applicant did not demonstrate practical difficulties sufficient to warrant the significant variance relief requested when other projects, which could be completed as a matter of right or by special exception, might address the Applicant's practical difficulties satisfactorily.

The Board concludes that the requested relief cannot be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board credits the testimony of the Office of Planning that approval of the requested variances would weaken the intent of the Zoning Regulations that small lots should be developed with small buildings. As the Applicant acknowledged, the subject property is "one of a group of eight properties with uniquely small lot sizes." Approval of the requested variances for the subject property could encourage owners of neighboring properties, each of them also "uniquely small," to seek approval of rear additions to enlarge their small houses. If the Board granted variances to each similarly situated property, the relief would effectively amend the zoning of the parcels so as to allow a maximum lot occupancy much greater, and rear yards much smaller, than the requirements approved by the Zoning Commission and set forth in the Zoning Regulations. The Board credits the testimony of the Office of Planning that the Applicant's proposed rear addition would represent "a significant departure" from the character of adjacent properties, since approval of the variances could encourage neighboring property owners to seek similar relief. Such relief could potentially lead to substantial increases in pervious surface and building density and to the near elimination of the limited open space within the square.

The Board is required to give "great weight" to any issues and concerns raised by ANC 6B in this proceeding. The Board credits the unique vantage point that ANC 6B holds with respect to the impact of the requested zoning relief on the ANC's constituents. However, the Board concludes that the ANC did not offer persuasive evidence that would cause the Board to find that the requested zoning relief should be approved. The ANC's submission stated only its conclusions that "the strict application of the regulations would result in peculiar and exceptional practical difficulties or exceptional and undue hardship upon the owner," without giving reasons or stating any specific issues or concerns.

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Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the written report of ANC 6B, the Board concludes that the requested zoning relief cannot be approved without impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. For the reasons stated above, the Board concludes that the Applicant has not satisfied the requirements for area variances from the lot occupancy requirement under § 403, the rear yard requirement under § 404, or the nonconforming structure provisions under § 2001.3 to allow construction of a rear addition to an existing one-family row dwelling in the R-4 district at premises 1515 Massachusetts Avenue, S.E. (Square 1072-S, Lot 10). Accordingly, it is hereby **ORDERED** that the application is **DENIED**.

VOTE: 5-0-0

(Ruthanne G. Miller, Marc D. Loud, Mary Oates Walker,
Shane L. Dettman, and Gregory N. Jeffries voting to deny)

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

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

FINAL DATE OF ORDER: JULY 9, 2009

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Appeal No. 17902 of Joseph Park, pursuant to 11 DCMR §§ 3100 and 3101, from an August 29, 2008 decision of the Zoning Administrator to revoke Certificate of Occupancy Permit No. 167331, for a liquor store (Oasis Liquors) in the R-4 District at premises 1179 3rd Street, N.E. (Square 773, Lot 277).

HEARING DATE: April 14, 2009

DECISION DATE: May 12, 2009

ORDER

PRELIMINARY MATTERS

On October 24, 2008, Mr. Joseph Park (“Appellant”) filed this appeal with the Board of Zoning Adjustment (“BZA” or “Board”), challenging the revocation of Certificate of Occupancy Permit No. 167331 (“C of O”). The Appellant owns the property located at address 1179 3rd Street, N.E. (“subject property”), and has operated a nonconforming liquor store there since approximately 1986. Due to age, ill health and other factors, the Appellant decided to lease the liquor store operation and the Department of Consumer and Regulatory Affairs (“DCRA”) issued C of O No. 167331 to his lessee, Mikyung Yoon, on May 30, 2008. After issuing the C of O, the Zoning Administrator (“ZA”) determined that the nonconforming liquor store use had been discontinued for at least three years, and that therefore, the C of O issued to Mr. Yoon had to be revoked. The “Notice to Revoke Certificate of Occupancy No. 167331,” dated August 29, 2008 was mailed to the Appellant automatically revoking the C of O 10 business days later.

The Appellant appealed the Notice of Revocation to the Board claiming that there had been no abandonment of the liquor store use, and that the revocation was in error.

The Board heard the appeal on April 14, 2009, but kept the record open for further information from the Appellant, and set a decision date of May 12, 2009. At the May 12th public meeting, the Board voted 3-0-2 to grant the appeal.

FINDINGS OF FACT

The subject property and the nonconforming use

1. The subject property is located at address 1179 3rd Street, N.E., at the corner of 3rd and M Streets, N.E., in an R-4 zone district.
2. On the subject property is a one-story building built as a commercial building in 1938, which is now the end building of a line of attached row dwellings fronting on 3rd Street.
3. The subject building contains a liquor/convenience store, which is owned by, and has been operated by, the Appellant.

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4. The Appellant's store has existed at this location since 1986 and has operated pursuant to a valid Certificate of Occupancy permit ("C of O"), No. B146037, which was issued to the Appellant on July 9, 1986.
5. At some point in, or after, 1986, the Appellant obtained a liquor license, permitting his store to sell liquor.
6. From 1986 until 1997, the subject property was located in a C-M-1 zone district. In 1997, the property was re-zoned to R-4, although the other three corners of the intersection of 3rd and M Streets, N.E., remained zoned C-M-1.
7. Due to the 1997 re-zoning, Appellant's store became a nonconforming use. 11 DCMR § 199.1, definition of "Use, nonconforming."
8. Discontinuance of a nonconforming use for a period of more than three years is construed as prima facie evidence of an intention not to resume active operation of the use. Any subsequent use must conform to the regulations of the district in which the use is located. 11 DCMR § 2005.1.

History leading to this appeal

9. At some point in 2003/2004, the Appellant began experiencing health problems, causing him to reduce the amount of time that his store was open.
10. Through September, 2006, the Appellant continued to operate his store only sporadically - one or two days a week, or less - as his health permitted.
11. The Appellant's Basic Business License, which permitted him to operate his store, last expired on July 31, 2003, and was not renewed.
12. The Alcoholic Beverage Regulation Administration of the District of Columbia ("ABRA") sent the Appellant a letter dated November 9, 2005,¹ stating that its records indicated that the Appellant's store was "not operating," but that his liquor license had not been placed in "safekeeping." Exhibit No. 23.²
13. Appellant took no action in response to this letter until March 24, 2008, when he paid \$2,600 to put his store's liquor license in "safekeeping" with the ABRA.
14. Water service to the Appellant's store had been disconnected in April, 2005 as a result of an arrearage of over \$3,000. Water service remained disconnected until it was restored in May,

¹The ABRA letter was sent to an address at which the Appellant had not resided since 1996.

²There is no explanation in the record of how or why the ABRA came to the conclusion that the Appellant's business was "not operating," other than an allusion in the ANC's letter to the effect that the ABRA had done a "spot check of the establishment." Exhibit No. 15.

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2008.

15. A “Merchant Financial Activity Statement” from American Express for Appellant’s store during the period of December 12, 2007 to January 11, 2008, shows one transaction with a sales amount of \$5.95.
16. Through the year 2008, the Appellant filed with the D.C. government Unincorporated Business Franchise Tax Returns for his store.³ The 2004 and 2005 returns show income from the business, while the 2006 return shows no income, but shows that repairs were made to the subject property.
17. Through the year 2008, the exterior of the subject property was not particularly well maintained, with, for example, “signs falling off the side of the building.” Exhibit No. 15 (ANC Letter).
18. Beginning in approximately September, 2006, the Appellant received several offers from persons wishing to lease the business. *See*, Exhibit No. 20.
19. On April 30, 2008, the Appellant entered into a commercial lease with Mr. Mikyung Yoon. Exhibit No. 20.
20. Mikyung Yoon was to lease the Appellant’s business and continue the liquor store use for one year beginning on May 1, 2008, with an option to renew for five years, and an option to purchase the property within the five-year period. Exhibit No. 20.
21. DCRA issued C of O No. 167331 to Mikyung Yoon on May 30, 2008 for a “retail beverages store” on the subject property. The C of O erroneously noted the zone district of the subject property as C-M-1. It had no expiration date.
22. Around the time of entering the lease with Mikyung Yoon, the Appellant made renovations to the property, but DCRA issued a Stop Work Order (“SWO”) and Notice of Infraction (“NOI”) because no building permit authorizing such renovations had been obtained.
23. Thereafter, the Appellant paid the fine associated with the NOI and applied for a building permit.
24. DCRA issued the Appellant a building permit for the subject property on July 18, 2008 allowing him to “alter partition, repair walls 7 (sic) painting, repair ceiling, replace window glass, repair roof, fix drainage.” Exhibit No.2, Third Attachment.
25. The Appellant spent approximately \$30,000 repairing and renovating the subject property in preparation for the operation of the liquor store business by Mikyung Yoon. Hrg. Trans., at 133.

³Tax returns for 2002 and 2003 are not in the record and their absence was not explained.

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26. After investigating the circumstances surrounding the operation of the Appellant's business, DCRA concluded that it had been discontinued for more than three years, and, pursuant to 11 DCMR § 2005.1, on August 29, 2008, revoked C of O No. 167331 as erroneously issued.
27. The Appellant filed the instant appeal of revocation of C of O No. 167331 on October 24, 2008.

CONCLUSIONS OF LAW

This appeal centers on one Zoning Regulation, 11 DCMR § 2005.1, which states:

Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as *prima facie* evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.

The test in the District of Columbia continues to be (1) the intent to abandon, and (2) some overt act or failure to act which carries the implication of abandonment. GW University v. DC BZA, 429 A.2d 1342 (DC 1981). In sum, for discontinuance to be shown under section 2005.1, the law requires more than mere lapse of time or "discontinued use". The law also requires this "intent to abandon" and some act/failure to act that implies abandonment.

This regulation sets up a rebuttable presumption: proven discontinuance of operation of a nonconforming use for more than three years results in an assumption that the owner of such use has no intention to resume such use. This assumption, or legal presumption, is, however, rebuttable, *i.e.*, can be contradicted, if the owner of the nonconforming use can make the appropriate showing that he did not intend not to resume the use. Therefore, the first thing that must be shown is that the nonconforming use has been discontinued for more than three years. If this is shown, the presumption arises. Notwithstanding the discontinuance for more than three years, however, the owner of the use next has the opportunity to demonstrate that they never intended not to resume the use. Such an intention must be proved to the Board by demonstrable, external facts. Such proof may involve actions or other evidence of intent taken at any time during or after the three year period identified by the ZA. It therefore behooves DCRA to take enforcement action sooner rather than later, since on any prior action evincing an intent to continue the business, no matter when taken, starts a new three year period.

As to whether the use had been discontinued for three years, the Board finds that the operation of the liquor store, although greatly reduced, did not ever cease for a period of more than three years. Although the Appellant concedes that he operated the liquor store only one or two days a week from approximately 2003 to September, 2006, this does not amount to "discontinuance,"

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which the Board interprets to mean a “cessation, shutdown, [or] closure.” *Webster’s Third New International Dictionary*, definition of “discontinuance.” *See*, 11 DCMR § 199.2(g). The Board concludes that Mr. Park did not intend to abandon the liquor store use, nor was there evidence of an overt act or failure to act that carried the implication of abandonment.

The Appellant also indicated that due to his ill health, he had failed to do what was necessary to keep all the aspects of his business viable. For example, he did not renew his Basic Business License, which expired on July 31, 2003, allowed the water service to be turned off for most of this time, and allowed the property to go into disrepair. However, none of these facts refute Appellant’s contention that he did operate the business, albeit sporadically. All that is indicated is that he did so without a license or water and in a deteriorating physical environment. While ABRA and the Zoning Administrator may have surmised from these factors that a discontinuance may have occurred, the Board has the advantage of having heard from Mr. Park and, having done so, concludes that no discontinuance of the business occurred.

In March of 2008, approximately a month before entering the lease with Mr. Yoon, Appellant made the payment to ABRA necessary to safeguard his liquor license. The April 30, 2008 lease permitted Mr. Yoon, to continue operating the business for one year with the option to renew the lease for five years, and the further option to purchase the property. Following the execution of the lease, Appellant took the actions necessary to resume water service, spent over \$30,000 to renovate and repair the subject property, and paid the necessary fines for beginning renovations without a permit.

Both separately and collectively, these actions rebut any presumption that Mr. Park had “no intention to resume active operation” of the nonconforming liquor store use, but instead manifest an intention to continue the business.

The Board therefore concludes that there was no three-year period of discontinuance of the nonconforming liquor store use at the subject property. The Board further concludes that even if there had been a discontinuance of this length, the actions of the Appellant to preserve and enhance the use rebutted the presumption of abandonment. Therefore, C of O No. 167331, issued to Mikyung Yoon for the same nonconforming use, and issued only because of a change in the operator of the use, was erroneously revoked.

The Board is required to give “great weight” to issues and concerns raised by the affected ANC. D.C. Official Code § 1-309.10(d). Great weight means acknowledgement of the issues and concerns of the ANC and an explanation of why the Board did or did not find its views persuasive. ANC 6C recommended denial of the appeal, stating that “nothing in the application provides any evidence to rebut the presumption spelled out in 11 DCMR § 2005.1.” Exhibit No.15, at 2. As explained above, the Board disagrees with this conclusion. The Board acknowledges the ANC’s contention that the “property certainly appeared to be abandoned,” (*Id.*) and there was other testimony to this point, but, as noted, the property’s unkempt appearance is not enough to establish either a three-year period of discontinuance or an intention not to resume the use. The ANC also states that if the business were continuously operated, it

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was done illegally because of the lack of a Basic Business License and the cut-off of water service, but these are not issues within the jurisdiction of this Board.

For all the reasons stated above, the Board concludes that the Appellant met its burden of demonstrating that DCRA erred in revoking C of O No. 167331. Therefore, it is hereby **ORDERED** that this appeal be **GRANTED**.

VOTE: **3-0-2** (Marc D. Loud, Shane L. Dettman and Anthony J. Hood to Approve.
Two Mayoral appointees (vacant) not participating, not voting.)

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

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

FINAL DATE OF ORDER: JULY 10, 2009

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-27**

Z.C. Case No. 08-27

**Consolidated Planned Unit Development and Related Amendment to the Zoning Map
American Institute of Architects and American Architectural Foundation**

(Square 170, Lots 38 & 39)

June 22, 2009

Pursuant to proper notice, the Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 787, et seq.; D.C. Official Code § 6-641.01), held a public hearing on May 18, 2009 to consider an application from the American Institute of Architects ("AIA") and the American Architectural Foundation ("AAF") (collectively, the "Applicant"), for the consolidated review and approval of a planned unit development ("PUD") and a related Zoning Map amendment from the SP-2 to the C-3-C Zone District for Lots 38 and 39 in Square 170. The Commission considered the application pursuant to Chapter 24 of the District of Columbia Municipal Regulations ("DCMR") Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

The Commission took proposed action to approve the PUD and related Zoning Map amendment application on May 18, 2009.

The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to §492 of the District Charter. NCPC, by action dated June 4, 2009, found that the proposed Consolidated PUD and related map amendment application is not inconsistent with the Comprehensive Plan for the National Capital nor would it adversely affect any other federal interests.

The Commission took final action to approve the PUD and related Zoning Map amendment application on June 22, 2009.

FINDINGS OF FACT

Procedural Background

1. On October 3, 2008, the Office of Zoning received an application from the Applicant requesting the Commission to approve a consolidated PUD and related Zoning Map amendment from the SP-2 to the C-3-C Zone District, with premises address of 1735 and 1799 New York Avenue, N.W., Lots 38 and 39 in Square 170 (the "Property").
2. On November 10, 2008, the Commission considered the Consolidated PUD and Zoning Map Amendment application and voted to set the case down for a public hearing. On March 13, 2009, the Applicant filed its pre-hearing statement with the Office of Zoning and a public hearing was scheduled before the Commission for May 18, 2009. Notice of the public hearing was given in accordance with the provisions of 11 DCMR §§ 3014 and 3015.

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3. By a letter dated April 17, 2009, and received by the Office of Zoning on April 20, 2009, the West End Citizens Association (“WECA”) requested to participate as a party in the proceeding.
4. On May 18, 2009 the Commission held a public hearing on the application, which was conducted in accordance with the provisions of 11 DCMR § 3022. Paul Tummonds of Pillsbury Winthrop Shaw Pittman, LLP and Christine McEntee, Executive Vice President and Chief Executive Officer of the AIA presented the case on behalf of the Applicant. As a preliminary matter, the Commission accepted the Applicant’s architect, Marnique Heath of Studios Architecture, as an expert in architecture and considered the party status application of WECA. The Applicant had no objection to the granting of party status to WECA. WECA was granted party status by the Commission. Eric Malinen of ANC 2A testified on behalf of Advisory Neighborhood Commission (“ANC”) 2A. Barbara Kahlow testified on behalf of WECA.

PUD SITE

5. The Property is located in Square 170, which is bounded by New York Avenue, N.W. on the south, 18th Street, N.W. on the west, F Street, N.W. on the north, and 17th Street, N.W. on the east. The Property is located at the corner of New York Avenue and 18th Street, with frontage on both streets. The Property is comprised of 39,546 square feet of land area. (Exhibit 12, p. 1.)
6. The Property is improved with a seven-story office building constructed in 1973. This office building serves as the headquarters building for the AIA. Development of the AIA headquarters office building was approved by the Board of Zoning Adjustment (“BZA”) in BZA Application No. 10463. The Property is also improved with the Octagon House, a residence constructed in approximately 1801, which is now a designated historic landmark. The AAF owns and administers the house. The Octagon House (with an address of 1799 New York Avenue, N.W.) and the AIA headquarters office building (1735 New York Avenue, N.W.) are separated by an open plaza that includes hardscape and softscape elements. (Exhibit 12, pp. 4-5.)
7. The Property is included in the High-Density Commercial Land Use category on the District of Columbia Comprehensive Plan Future Land Use Map. (Exhibit 12, p. 2.)
8. The area immediately adjacent to the Property is comprised of the following:
 - GOV zoned property to the east;
 - Immediately to the north is C-3-C zoned property;
 - Immediately south of the Property across New York Avenue is SP-2;
 - Immediately west of the Property across 18th Street is GOV.

(Exhibit 12, p. 3 & Exhibit A, p. ZA0.1.)

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9. The Property is currently located in the SP-2 Zone District. This zone classification permits commercial and residential uses to a maximum building height of 90 feet and a maximum commercial building density of 3.5 FAR. (Exhibit 12, Exhibit A, p. ZA0.2.)
10. The Applicant requests a PUD-related map amendment to rezone the Property to the C-3-C Zone District, consistent with high-density commercial properties to the north and government properties to the east and west. The C-3-C Zone District is a commercial district that permits medium-high density development, including office, retail, housing, and mixed-use development. Buildings in the C-3-C Zone District may be constructed to a maximum height of 90 feet and maximum density of 6.5 FAR as a matter-of-right. (Exhibit 12, Exhibit A, p. ZA0.2.)

PUD APPLICATION AND PROJECT

11. The consolidated PUD application proposes the renovation and rehabilitation of the AIA headquarters office building in a manner that respects the integrity of the potentially historic headquarters building, maintains the existing appropriate relationship to the Octagon House, and achieves significant sustainability improvements to the headquarters building. The Applicant's goal is to use this process as a national demonstration project to show how the highest level of sustainable design features can be applied to an existing mid-20th Century office building. The Applicant will seek LEED Platinum certification for this project, and the project will seek to achieve carbon neutrality by the year 2030. A preliminary LEED checklist was submitted by the Applicant into the record of this case. Upon completion of this project, the AIA will occupy floors two and five through seven for office use, and floors three and four will be rented for other commercial office tenants, just as the building has been used since it opened in 1973. The project will not increase the density of the existing building and will make minimal changes to the building's exterior. (Exhibit 12, p. 5.)
12. Christine McEntee, the CEO of the AIA testified that the proposed project addresses four major goals of the AIA:
 - Demonstration of leadership by the AIA;
 - Sustainability and Energy reduction;
 - Creation of an innovative 21st Century Workplace; and
 - Historic preservation.

Ms. McEntee noted that this project provides the AIA with the opportunity to demonstrate its commitment to its public policies and to demonstrate its leadership in the areas of sustainability and energy reduction, integrated project delivery and diversity. Ms. McEntee noted that AIA's Board has mandated that it have diversity in the design and construction teams working on this project, such that 15% of fees and construction dollars are awarded to minority-owned firms, 15% to women owned firms, and 15% to

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small and emerging firms. Ms. McEntee noted that the Applicant is well on its way to satisfying those mandates. Ms. McEntee also noted that one of the key design characteristics of the original design of the AIA headquarters office building is the harmony the modern building achieves with the Octagon House. The proposed renovations of the headquarters office building are intended to have no adverse impact on the building's eligibility for historic recognition in the future. Ms. McEntee noted that the Applicant has met with the District's State Historic Preservation Officer and staff members of the Commission of Fine Arts on numerous occasions to review the project and no objections have been made by either of these entities.

13. As noted in the testimony of the project architect and in written submissions, the renovation will include green design and increased efficiency, including water use, the heating/cooling strategy, the lighting scheme, and the stormwater management program. The proposed project will consume 60% less energy than it does today. This reduction will be accomplished through the use of passive strategies such as natural ventilation and daylighting, in addition to energy efficient lighting and lighting controls, water-side HVAC equipment and solar thermal collectors. The natural ventilation and daylighting strategies will be accomplished through the introduction of three air shafts into the building. Construction of three air intake structures on the main roof level of the building are necessary to achieve the natural ventilation and daylighting strategies. Each of the air intake structures will be 20 feet, seven inches tall, as measured from the roof level. (Exhibit 12, pp. 5-6, Exhibit A.)
14. As depicted in the pre-hearing statement and in the materials presented at the public hearing, the main roof level of the renovated building will include many sustainable design features. It will include a row of solar hot water collectors that are nine feet, two inches tall and are setback 14 feet, three inches from the exterior wall of the building. The main roof level will also be covered with a high-albedo roofing material. Rainwater will be collected from the main roof level of the building and stored in a cistern. The harvested rainwater will be used to reduce the building's use of potable water. In addition, the main roof level includes an area on the wing of the building that extends towards New York Avenue that will include a photovoltaic array. At this time, the Applicant does not know the specifics of how this photovoltaic array will appear, but does expect that it will not be of any significant height. The Applicant will seek appropriate District approval for the photovoltaic array at the time this system is to be put in place. A vegetated green roof will grow above the second floor AIA boardroom. This green roof will be visible from within the building and the plaza. (Exhibit 12, pp. 7-8, Exhibit A.)
15. The sustainable design elements of the project will also extend to the plaza between the two buildings. The project will retain existing trees, incorporate recycled brick throughout the plaza, and include a bioretention cell in the landscape plan. At the request of the Commission, the Applicant submitted a modified landscape plan that included

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enhancements to the area of the Plaza adjacent to the Octagon House. (Exhibit 12, pp. 8-9, Exhibit A, p. ZA.03 and Exhibit 30, Exhibit A.)

16. The proposed project will include retail uses and multi-purpose spaces accessible directly from the plaza. The multi-purpose room will have direct access to the plaza area. The Applicant intends to lease the multi-purpose spaces to outside groups and organizations for meetings, receptions and events. The proposed bookstore use will draw pedestrians from 18th Street and New York Avenue into the plaza, and patrons may enter the bookstore directly from the plaza. Access to the plaza will not be limited at any time of the day or night. The Applicant anticipates that the book store will be open from the hours of 9:00 AM to 5:00 PM. (Exhibit 12, pp. 8-9.)
17. The Applicant and its representatives noted that the current SP-2 zoning for the Property does not allow the proposed use of the multi-purpose space as a matter-of-right and that such use could only be approved by the BZA through the granting of a use variance. The Applicant also noted that the proposed direct entrance to the retail uses, visibility of the retail uses from the sidewalk adjacent to the Property, and signage for the retail uses that was visible from the adjacent sidewalk are not permitted in the SP-2 Zone District.
18. Pursuant to 11 DCMR § 2405.7, the Commission has the authority to grant flexibility from the Zoning Regulations in connection with a PUD. The Applicant requested relief from the restriction on additions to non-conforming roof structures (§ 2001.3), from the single roof structure requirement (§ 411), and from the roof structure set back requirement and height limitation (§§ 411 and 770.6). The Commission finds that granting this requested flexibility is necessary for the project to achieve its significant sustainability goals, that the impact of granting this flexibility is acceptable given the quality of public benefits in the project.

SATISFACTION OF THE PUD EVALUATION STANDARDS

19. Pursuant to 11 DCMR § 2403, in evaluating a PUD application the Commission must “judge, balance, and reconcile the relative value of Project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” (11 DCMR § 2403.8.) The Commission finds that the related rezoning, development incentives and requested flexibility from the Zoning Regulations are appropriate and are justified by the benefits and amenities offered by this Project. As detailed in the Applicant’s written submissions and testimony to the Zoning Commission, the proposed PUD will provide the following Project amenities and public benefits:
 - Urban Design, Architecture, and Creation of Open Space: Section 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. By combining sustainable design with the appropriate treatment of a potentially historic structure, this project embraces truly exemplary design. The public plaza between the Octagon House and the headquarters building will be a

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signature component of the project and will create a neighborhood destination and gathering spot that is otherwise unavailable in the immediate vicinity. Although the exterior of the building will remain largely unchanged, the Commission agrees that the renovated building respects the design and scale of the surrounding buildings. (Exhibit 12, p. 14.)

- Site Planning, and Efficient and Economical Land Uses: Pursuant to § 2403.9(b) of the Zoning Regulations, “site planning, and efficient and economical land utilization” are public benefits and project amenities to be evaluated by the Zoning Commission. Given the Subject Property’s location in the downtown core, it is appropriate to have high density commercial uses as proposed in this PUD project. The creation of an enhanced, large public plaza (accessible from both 18th Street and New York Avenue) creates a respite for neighborhood denizens seeking a retreat in an area otherwise very dense with large office buildings and lacking in similar outdoor spaces. (Exhibit 12, pp. 14-15.)
- Environmental Benefits: According to § 2403.9(h), “Environmental benefits, such as (1) storm water runoff controls in excess of those required by Stormwater Management Regulations, (2) Use of natural design techniques that store, infiltrate, evaporate, treat, and detain runoff in close proximity to where the runoff is generated, and (3) Preservation of open space or trees” are deemed to be public benefits and project amenities. As a sustainable project seeking LEED Platinum certification, the renovated headquarters building will include an extensive stormwater management program that includes a bioretention cell in the redesigned plaza for stormwater collection and reuse on site. The green building materials, the cool and green roof systems, the use of natural ventilation to reduce the building’s reliance on its cooling system, the low energy lighting scheme, the limited-use water system, the goal of achieving carbon neutrality by 2030, and the many other environmentally-friendly elements of the building’s design are public benefits and project amenities. (Exhibit 12, p. 15.)
- Historic Preservation: Pursuant to § 2403.9(d), “historic preservation of private or public structures, places or parks” is a public benefit and/project amenity. The headquarters building represents a period of architectural significance (Mid 20th Century Modernism) that is held in high regard in the District of Columbia and has drawn the attention of the District’s historic preservation community. Indeed, as the national headquarters for the AIA, the headquarters building holds a particular prominence among architects, and it is a noteworthy building held in high esteem among preservationists in the District. (Exhibit 12, pp. 15-16.)
- Effective and Safe Vehicular and Pedestrian Access: The Zoning Regulations, pursuant to § 2403.9(c), state that effective and safe vehicular and pedestrian access, and transportation management measures can be considered public benefits and project amenities. The proposed project does not propose any modifications to the existing vehicular and loading entrances or the number of parking spaces. The

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pedestrian experience with cars and trucks accessing the parking garage and loading berths will remain the same as it has been since the headquarters building was constructed in 1973 and will not create any new conflicts that could prove problematic. In addition, the project includes bicycle parking spaces on site and showers for building tenants in the lower level of the building. (Exhibit 12, pp. 16-17.)

- Uses of Special Value: Under § 2403.9(i), “uses of special value to the neighborhood or the District of Columbia as a whole” are deemed to be public benefits and project amenities. The following aspects of the project can be considered to be uses of special value:
 - a national demonstration project for the highest levels of sustainable design;
 - landscaped plaza open to the general public;
 - retail uses on the ground floor of the headquarters building; and
 - AIA and AAF programs that are made available to the public.

(Exhibit 12, p. 17.)

20. First Source Employment Program: According to § 240.9(e), “employment and training opportunities” are representative public benefits and project amenities. The Applicant has agreed to enter into an agreement to participate in the Department of Employment Services (“DOES”) First Source Employment Program to promote and encourage the hiring of District of Columbia residents. (Exhibit 12, p. 17.)
21. The proposed PUD-related Zoning Map amendment to the C-3-C Zone District will facilitate the use of the Property for street-fronting retail uses that will assist in enlivening the plaza and the nearby streets. The PUD project will not increase density, height, or intensity of use on the Property as a result of the PUD related Map Amendment. The PUD project actually results in a minor reduction of the AIA headquarter office building’s gross floor area. The proposed PUD’s FAR, height, and lot occupancy are all within the matter-of-right limitations for the C-3-C Zone District, and are therefore well within the PUD standards set forth in 11 DCMR § 2405.
22. The Commission finds that the proposed PUD and related map amendment is not inconsistent with the District Elements of the Comprehensive Plan for the National Capital (“Comprehensive Plan”) and is fully consistent with the following components of the Comprehensive Plan:
 - Central Washington Area Element: The Comprehensive Plan advances the policy that Central Washington should remain as the premier office location in the Greater Washington region, offering a range of office space to various users. (Policy CW-1.1.2 Central Washington Office Space). In addition, the Area Element promotes “active street life throughout Central Washington through the design of buildings, streets, and public spaces.” (Policy CW-1.1.2 Creating Active Street Life and Public Spaces). The project will offer a newly renovated office building with a landscaped

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- plaza, which is open to the public. The project will draw pedestrians from 18th Street and New York Avenue and will enliven a block of the City that is otherwise very quiet.
- Land Use Element: The Comprehensive Plan provides policies to offer “an attractive and accessible environment for shoppers” and to develop “outdoor sidewalks cafes, flower stands, and similar uses which ‘animate’ the street...” (Policy LU-2.4.10: Use of Public Space within Commercial Centers). The renovated plaza and street facing retail and multipurpose space are consistent with these policies.
 - Environmental Protection Element: This element of the plan offers policies for energy efficiency and alternative energy sources (Policy E-2.2.5: Energy Efficient Building and Site Planning) and for major employers to implement energy conservation measures. (Policy E-2.2.6: Energy Efficiency at Major Employment Centers). In addition, the Comprehensive Plan provides polices promoting the use of permeable materials (Policy E-3.1.1: Maximizing Permeable Surfaces) and using construction practices that minimize impact on the environment. (Policy E-3.4.1: Mitigating Development Impacts) As a project that will attain LEED Platinum certification and will seek to achieve carbon neutrality by 2030, this project is entirely consistent with these policies. The stormwater and runoff containment measures that the project’s design will include are equally consistent with these policies. In addition, the project will use recycled and environmentally-friendly building materials, which is consistent with these policies.
 - Economic Development Element: The Comprehensive Plan states that the District should be promoted as having the qualities that favor it as a headquarters or branch setting for multi-national corporations, including its economic, social, political and locational attributes. (Policy ED-2.1.2: Corporate Headquarters). Also, the Comprehensive plan promotes the construction of signature office buildings. (Policy ED-2.1.3: Signature Office Buildings). As a demonstration project for sustainable design, the renovated headquarters building will be a national symbol. In addition, the approval and development of this project will encourage other large national organizations to locate in the District and build similar projects. The sustainable design and historic preservation components of this project will be both a local and national emblem of commercial architecture.
 - Urban Design Element: The Comprehensive Plan promotes “excellence in the design of Downtown buildings and landscapes.” (Policy UD-2.1.4: Architectural Excellence). In addition, the Comprehensive Plan promotes polices to provide public spaces that stimulate and activate urban street life. (Policy UD-3.1.8: Neighborhood Public Space). The project will offer a unique combination of sustainable design components with particular attention paid to historic preservation of an existing office building. These elements will make the renovated headquarters building the hallmark

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of green commercial architecture. In addition, the plaza will enliven the area with a new public gathering space.

- Historic Preservation Element: The Comprehensive Plan encourages the preservation of historic buildings from the “recent past” or modern era. (Policy HP-1.1.4: The Recent Past). In addition, the Comprehensive plan promotes maintaining historic properties in the original uses. (Policy HP-2.4.2: Adaptation of Historic Properties for Current Use). The headquarters building was completed in 1973 and is part of the modern era of architecture. Accordingly, preserving this structure from the “recent past” is an important component of the project. In addition, the renovation of this historic structure maintains its use as a commercial office building.

GOVERNMENT REPORTS

23. The Office of Planning (“OP”) submitted a report, dated April 24, 2009, that recommended approval of the proposed consolidated PUD and related Zoning Map amendment. The report stated, in part:

OP supports the proposed LEED Platinum renovation and rehabilitation of an existing office building and plaza, with the addition of retail uses on the ground floor that is not inconsistent with the requirements of the 2006 Comprehensive Plan. The redevelopment would help to enliven a downtown street corridor, provide retail and park options, and deliver sustainability benefits to the surrounding neighborhood. OP also finds that the public benefits and project amenities are appropriate given the minimal amount of flexibility requested in the application.

OP also determined that, “a PUD with related map amendment provided the best vehicle for the modernization of the property and the inclusion of retail” and that the application supported numerous policies of the Comprehensive Plan. The OP report continued by stating that the Applicant met with the State Historic Preservation Officer to review its proposal for the headquarters building and that “the SHPO did not have any concerns regarding the proposed renovation.” The OP representative reiterated OP’s support for the application during his testimony at the May 18, 2009 public hearing. (Exhibit 18, pp. 1, 5-9.)

24. There were no other government reports in this case.

ANC REPORT

25. At the May 18, 2009 public hearing, Eric Malinen, a duly authorized representative of ANC 2A, submitted ANC 2A’s resolution in opposition to the consolidated PUD and related Zoning Map amendment application into the record. Mr. Malinen indicated that the ANC voted unanimously to oppose the Application. The resolution stated in part,

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“the Applicant’s proposed public benefits and community amenities package is inconsistent with DC law since it fails to include any amenities for the immediately impacted Foggy Bottom-West End community.” ANC 2A also submitted a report to the Commission, dated May 11, 2009, that discussed the ANC’s opposition to the PUD and related map amendment. (Exhibit 20.)

26. The ANC’s report highlighted its opposition to the proposed PUD based on the selected procedure for modifying the headquarters building. The report stated, in part, “The modifications proposed by the applicant are the sort that can be accommodated through existing procedures utilized by the Board of Zoning Adjustment ... [The Applicant’s] requests could be accomplished under traditional BZA procedures.” The report continued by expressing its support of the project under the BZA process: “Indeed, we anticipate that if the Applicant were to proceed with this case before the BZA, ANC 2A would support the requested relief.” (Exhibit 20, pp. 3-5.)

The report also expressed ANC 2A’s opposition to the proposed PUD-related map amendment stating, “Upzoning to C-3-C has the potential for substantial development inconsistent with these policies of the existing buffer ... Allowing the Applicant to obtain C-3-C zoning will violate the policy behind SP-2 zoning.” (Exhibit 20, pp. 8-9.) The report also objected to the “precedent of a new C-3-C district...” However, the report also stated, regarding the bookstore use, that “ANC 2A would likely support” variance relief for this use. (Exhibit 20, p. 5.)

PARTIES IN OPPOSITION

27. At the May 18, 2009 public hearing, Barbara Kahlow testified on behalf of WECA in opposition to the proposed PUD and related Zoning Map amendment. Ms. Kahlow testified, in part, “Today’s proposed PUD would provide no amenities whatsoever to the impacted Foggy Bottom-West End community. Thus the Application is inconsistent with DC law and cannot be approved as submitted.” Ms. Kahlow continued her opposition by stating, in part, “Upzoning for the instant Application could lead to multiple upzoning requests elsewhere in Foggy Bottom-West End. This would result in the destruction of our residential and mixed use community.” (Exhibit 25, pp. 1-2.)

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD Project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.2.) The development of this PUD project satisfies the goals and standards of Chapter 24 of the Zoning Regulations to encourage well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.

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2. Notice of the public hearing was provided in accordance with the Zoning Regulations.
3. The proposed PUD meets the minimum area requirements of 11 DCMR §2401.1.
4. Under 11 DCMR § 2402.5, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards.
5. 11 DCMR § 2403 provides the standards for evaluating a PUD application. 11 DCMR § 2403.9 provides categories of public benefits and project amenities for review by the Commission. The objective of the PUD process is to encourage high quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under matter-of-right zoning. In this application, the Commission finds that the requested relief from the roof structure requirements can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Commission concludes that the benefits and amenities provided by the Project are entirely appropriate for the development proposed in this application. The Commission agrees with the Applicant's written submissions and testimony and finds that the Applicant is requesting very few development incentives, as the Applicant is not requesting additional building height or density (the gross floor area of the AIA headquarters office building is actually decreasing) and the flexibility requested from the Zoning Regulations (solely related to the roof structures) is directly tied to the primary amenity of the project, the creation of a national demonstration project to show how the highest levels of Sustainable Design can be applied to a mid-20th Century office building.
6. The impact of the project on the surrounding area and the operation of city services and facilities is acceptable given the quality of public benefits in the project.
7. The Commission acknowledges the issues and concerns raised by ANC 2A and WECA and fully credits the unique vantage point that ANC 2A holds with respect to the PUD process and the impact of the PUD-related map amendment on the ANC's constituents. However, for the reasons stated below, the Commission does not find either the ANC's or WECA's positions persuasive.
8. The Commission does not agree with WECA and ANC 2A that the public benefits and amenities offered by the PUD are insufficient for the impacts that the PUD will have on the neighborhood and for the amount of zoning flexibility requested by the Applicant. Instead, the Commission finds that the Applicant is requesting a limited amount of flexibility from the Zoning Regulations and that the impacts of the PUD project on the surrounding community will be negligible. The Commission finds that the benefits and amenities offered by the PUD should correspond with the extent of relief and development incentives that the Applicant is requesting and with the extent to which the PUD adversely impacts the surrounding properties. The Commission finds that the

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flexibility requested from the roof structure requirements is limited in scope, and the resulting roof plan will not adversely affect nearby properties. Further, the Commission finds that the PUD will have negligible impacts on the surrounding properties because the use, scale, height, and density of the building will not change (the gross floor area of the AIA office building actually decreases). The Commission concludes that the benefits and amenities offered by the PUD: (i) the significant environmental benefits created by this project; (ii) the creation of a national demonstration project for Sustainable Design of a potentially historic mid-20th Century office building; (iii) the enlivened plaza; and (iv) the street-facing and accessible retail and multipurpose space are public benefits commensurate with the limited zoning relief requested and with the PUD's negligible adverse impact on the surrounding community.

9. The Commission finds that the PUD and related map amendment process is the best means to accomplish the modifications proposed by the Applicant. In order to accomplish the proposed modifications through the BZA process, the Applicant would have to seek multiple variances and special exception relief. The Commission finds this process inappropriate and unnecessary. The Commission does not agree with the ANC and WECA that variance relief from the BZA would be the proper course of action for the Applicant's proposed modifications. The requested areas of relief from the Zoning Regulations can best be assessed and granted through the PUD process, which allows the Commission to consider the requested relief collectively, as opposed to piecemeal variances and special exceptions required by the BZA.
10. The Commission finds that the PUD-related map amendment is the best means to accomplish the proposed project's goals for animating the ground floor uses of the building. In particular, the Applicant would be required to seek a use variance for the proposed use of the multi-purpose room. The Applicant likely would be unable to meet the stringent criteria for a use variance, so this proposed multi-purpose room use would not be possible without the requested PUD-related map amendment. The Commission agrees with the Applicant that the proposed multi-purpose room use, and the bookstore use accessed directly from the exterior of the building, will enliven the pedestrian activity in the area and is consistent with numerous policies and goals of the Comprehensive Plan.
11. The Commission finds that the proposed PUD-related rezoning of the Property to the C-3-C Zone District is consistent with the surrounding uses, intensity of uses, and heights of surrounding properties. The rezoning of the Property is also consistent with the High-Density Commercial land use designation on the Future Land Use Map of the Comprehensive Plan. Approval of the PUD related map amendment application will result in no adverse effect on neighboring properties.
12. The Commission does not agree that its grant of the PUD-related map amendment will lead to an undesirable precedent or to multiple upzoning requests in the area. Each PUD

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and related map amendment application presented to the Commission is evaluated on its own merit. In this case, the Commission finds that the proposed PUD-related map amendment to the C-3-C Zone District does not violate the policy that supports buffer districts, like the SP-2 Zone District, between commercial and residential areas. The Property is surrounded by high-density commercial and government uses. No residential districts are adjacent to the Property, so the present SP-2 Zone District does not act as a buffer between commercial and residential land uses. The Commission finds that its granting of the PUD-related map amendment will maintain the integrity of the policy that supports buffer districts.

13. By virtue of the preceding discussion, the Commission has accorded the issues and concerns raised by ANC 2A the “great weight” to which they are entitled pursuant to D.C. Official Code § 1-309.10. The Commission fully credited the unique vantage point that ANC 2A holds with respect to the impact of the requested consolidated PUD and related map amendment on the ANC’s constituents. However, for the reasons stated above, the Commission concludes that the ANC did not offer persuasive evidence that would cause the Commission to deny the consolidated PUD and related Zoning Map amendment requested.
14. The Commission concludes that approval of the proposed consolidated PUD and related Zoning Map amendment from the SP-2 to the C-3-C Zone District is not inconsistent with the purposes of the Comprehensive Plan and is consistent with the other requirements of the Zoning Act. The proposed consolidated PUD and related Zoning Map amendment is not inconsistent with the inclusion of the Property in the High Density Commercial Land Use category on the Comprehensive Plan’s Future Land Use Map. The Commission also concludes that the proposed consolidated PUD and related Zoning Map amendment is in the best interests of the District of Columbia and will benefit the community in which the Property is located.
15. Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
16. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. The Commission concurs with OP’s recommendation for approval and has given its recommendation the great weight to which it is entitled.

DECISION

In consideration of the Finding of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review of a Planned Unit Development and Zoning Map amendment application

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from the SP-2 to the C-3-C Zone District for Square 170, Lots 38 and 39. The approval of this PUD and related Zoning Map Amendment is subject to the following guidelines, conditions, and standards:

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 3, 12, and 30 of the record, as modified by the guidelines, conditions, and standards of this order.
2. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA and no building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this order, or amendment thereof by the Zoning Commission. The applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
3. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, an application must be filed for a building permit and construction of the Project must start within three years of the date of the effective date of this order pursuant to 11 DCMR §§ 2408.8 and 2408.9.
4. The change of zoning from the SP-2 Zone District to the C-3-C Zone District for the Property shall be effective upon the recordation of the covenant discussed in Condition No. 2, pursuant to 11 DCMR § 3028.9.
5. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in substantial conformance with the First Source Agreement submitted as Exhibit H to Exhibit 12 of the record. A fully executed First Source Employment Agreement shall be filed with the Office of Zoning and the Office of the Zoning Administrator prior to the issuance of a building permit for the PUD Project.
6. 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, gender expression or identity, familial status, family responsibilities, matriculation, political affiliation, disability, genetic information, 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

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subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

On May 18, 2009, upon the motion of Commissioner Turnbull, as seconded by Commissioner May, the Zoning Commission **APPROVED** the Application at the conclusion of its public hearing by a vote of 3-0-2 (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; William W. Keating, III and Gregory N. Jeffries not present, not voting).

On June 22, 2009, upon the motion of Chairman Hood, as seconded by Commissioner Keating, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of 4-0-1 (Anthony J. Hood, William, W. Keating, III, Peter G. May, and Michael G. Turnbull to approve, Konrad Schlater, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on July 17, 2009.

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