

**DISTRICT OF COLUMBIA
OFFICE OF THE MAYOR
OFFICE ON AGING**

PUBLIC NOTICE

Fiscal Year 2010 Lead Agency Grant Program

The Government of the District of Columbia, Office on Aging (DCOA) is **reissuing** this solicitation for applications from qualified applicants to provide a full array of services and activities that are designed to enhance the overall health and well-being of the District's elderly population, aged 60 and above.

Funding is available for one to eight applicants to serve one or more Wards in the District of Columbia. Funding has been provided to the Office on Aging from both Federal and District appropriated funds.

The purpose of these funds is to complement existing educational services and start up programs that target the senior population living in the District of Columbia. Examples of the service areas include, but are not limited to the following:

- case assessment/case management;
- congregate meals;
- counseling;
- health promotion;
- home delivered meals;
- nutrition counseling;
- nutrition education;
- recreation socialization;
- transportation of home delivered meals;
- transportation to site and activities;
- weekend congregate meals; and
- weekend home delivered meal service.

In addition, the operator of the Lead Agency has the following responsibilities:

1. Develop and implement a needs assessment to identify the needs in the target community;
2. Work in cooperation with the city's Aging and Disability Resource Center;
3. Develop and implement a structured community outreach program; and
4. Establish a Members Advisory Council to serve as advisors to help develop a coordinated service delivery system.

Applicants who apply to this Request for Application must design services to meet the complex and ever-changing needs of the elderly individuals with the greatest economic and/or social

needs, with particular emphasis on the low-income minority elderly. In addition, an applicant may apply for multiple grants in separate applications under this RFA.

Nonprofit organizations with places of business within the physical boundaries of the District of Columbia are eligible to apply. For profit organizations with places of business within the physical boundaries of the District of Columbia are also eligible to apply, but must not include profit in their grant application.

The RFA will be released on Friday, August 21, 2009 and the deadline for submission is Friday, September 4, 2009 at 5:00 p.m. A Pre-Application Conference will be held on Tuesday, August 25, 2009 from 10:00 a.m. -12:00 noon at the D.C. Office on Aging, Conference Room 950 South. Applications can be obtained from the D.C. Office on Aging, 441 4th Street, NW, Suite 900 South, Washington, DC 20001. The RFA will also be available on the Office on Aging's website, www.dcoa.dc.gov and on the Office of Partnerships and Grants Development's website, www.opgd.dc.gov.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD

NOTICE OF SCHEDULED MEETING

The Construction Codes Coordinating Board will be holding a scheduled meeting on Wednesday, August 26, 2009 at 2:00 pm. The meeting will be held at 941 North Capitol Street, NE, on the seventh floor in Conference Room 7237, Washington, D.C. 20002.

Draft board meeting agendas are available on the website of the Department of Consumer and Regulatory Affairs at dcra.dc.gov, by clicking on the "Construction Codes Coordinating Board (CCCB)" tab on the main page.

BOARD OF ELECTIONS AND ETHICS**CERTIFICATION OF ANC/SMD VACANCIES**

The District of Columbia Board of Elections and Ethics hereby gives notice that there are vacancies in two (2) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 3C07, 4D03

Petition Circulation Period: **Monday, August 24, 2009 thru Monday, September 14, 2009**

Petition Challenge Period: **Thursday, September 17, 2009 thru Wednesday, September 23, 2009**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

**D.C. Board of Elections and Ethics
441 - 4th Street, NW, Room 250N
Washington, DC 20001**

For more information, the public may call **727-2525**.

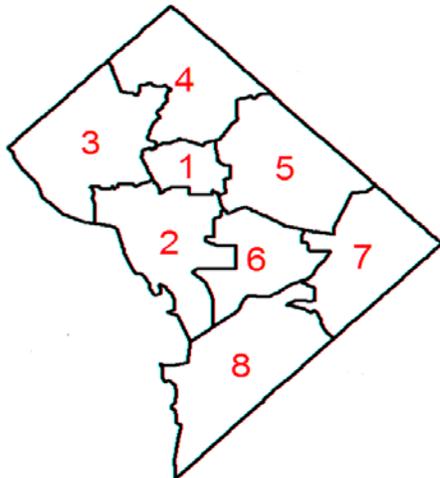
D.C. BOARD OF ELECTIONS AND ETHICS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE SUMMARY

Party Totals and Percentages by Ward for the period ending July 31, 2009

<i>WARD</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
<i>1</i>	35,633	2,589	799	9,757	201	48,979
<i>2</i>	28,698	5,454	336	9,617	167	44,272
<i>3</i>	34,185	7,747	347	10,119	151	52,549
<i>4</i>	46,457	2,699	599	8,561	177	58,493
<i>5</i>	45,953	2,013	567	7,174	171	55,878
<i>6</i>	38,405	5,091	509	8,540	173	52,718
<i>7</i>	45,406	1,502	464	6,377	124	53,873
<i>8</i>	37,329	1,357	495	6,255	128	45,564
TOTALS	312,066	28,452	4,116	66,400	1,292	412,326
<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: July 31, 2009

<i>PRECINCT</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
<i>20</i>	1,248	43	14	313	11	1,629
<i>22</i>	2,768	243	38	693	14	3,756
<i>23</i>	1,943	126	60	526	9	2,664
<i>24</i>	2,055	209	30	575	16	2,885
<i>25</i>	3,421	411	74	975	8	4,889
<i>35</i>	2,901	205	64	822	13	4,005
<i>36</i>	3,321	231	77	888	21	4,538
<i>37</i>	2,395	124	51	588	12	3,170
<i>38</i>	2,293	123	66	596	16	3,094
<i>39</i>	3,267	218	97	875	22	4,479
<i>40</i>	3,141	217	97	973	19	4,447
<i>41</i>	2,481	150	58	846	19	3,554
<i>42</i>	1,471	55	33	403	7	1,969
<i>43</i>	1,422	72	25	294	6	1,819
<i>136</i>	771	121	8	232	2	1,134
<i>137</i>	735	41	7	158	6	947
<i>TOTALS</i>	35,633	2,589	799	9,757	201	48,979

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

PRECINCT STATISTICS

Ward 2

For the Period Ending: July 31, 2009

<i>PRECINCT</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
2	408	121	5	249	6	789
3	1,251	400	8	547	8	2,214
4	1,277	395	8	565	7	2,252
5	2,111	729	21	786	9	3,656
6	2,479	1,155	38	1484	22	5,178
13	1,177	261	5	411	2	1,856
14	2,547	409	31	840	10	3,837
15	2,743	292	22	791	19	3,867
16	2,703	341	32	650	13	3,739
17	3,769	563	46	1166	38	5,582
18	3,175	195	54	686	11	4,121
21	1,328	92	26	290	6	1,742
129	1,747	297	16	629	5	2,694
141	1,983	204	24	523	11	2,745
TOTALS	28,698	5,454	336	9,617	167	44,272

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

PRECINCT STATISTICS

Ward 3

For the Period Ending: July 31, 2009

<i>PRECINCT</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
<i>7</i>	1,068	406	16	452	4	1,946
<i>8</i>	2,240	724	25	703	9	3,701
<i>9</i>	1,013	583	7	380	4	1,987
<i>10</i>	1,880	567	16	682	5	3,150
<i>11</i>	3,229	853	38	1,272	22	5,414
<i>12</i>	485	203	3	194	5	890
<i>26</i>	2,508	383	31	760	10	3,692
<i>27</i>	2,273	286	19	498	8	3,084
<i>28</i>	2,398	736	30	884	14	4,062
<i>29</i>	1,316	295	15	394	5	2,025
<i>30</i>	1,265	308	16	282	5	1,876
<i>31</i>	2,291	427	18	582	9	3,327
<i>32</i>	2,588	445	25	605	12	3,675
<i>33</i>	2,718	386	34	708	11	3,857
<i>34</i>	3,026	482	24	889	16	4,437
<i>50</i>	1,958	318	13	408	11	2,708
<i>138</i>	1,929	345	17	426	1	2,718
<i>TOTALS</i>	34,185	7,747	347	10,119	151	52,549

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

PRECINCT STATISTICS

Ward 4

For the Period Ending: July 31, 2009

<i>PRECINCT</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
<i>45</i>	2,111	90	39	367	11	2,618
<i>46</i>	2,954	106	33	529	13	3,635
<i>47</i>	2,600	170	41	676	18	3,505
<i>48</i>	2,706	155	42	529	10	3,442
<i>49</i>	691	35	18	170	2	916
<i>51</i>	3,101	605	32	629	7	4,374
<i>52</i>	1,238	293	5	242	2	1,780
<i>53</i>	1,155	89	16	257	4	1,521
<i>54</i>	2,250	117	35	453	9	2,864
<i>55</i>	2,628	95	35	414	14	3,186
<i>56</i>	3,022	101	34	647	16	3,820
<i>57</i>	2,533	91	32	436	15	3,107
<i>58</i>	2,258	62	31	363	4	2,718
<i>59</i>	2,568	101	29	391	10	3,099
<i>60</i>	1,975	88	23	650	7	2,743
<i>61</i>	1,575	61	20	277	3	1,936
<i>62</i>	3,142	174	37	371	7	3,731
<i>63</i>	2,982	117	59	526	11	3,695
<i>64</i>	2,286	66	14	303	7	2,676
<i>65</i>	2,682	83	24	331	7	3,127
<i>TOTALS</i>	46,457	2,699	599	8,561	177	58,493

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

PRECINCT STATISTICS

Ward 5

For the Period Ending: July 31, 2009

<i>PRECINCT</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
19	3,262	165	57	661	14	4,159
44	2,669	245	39	552	17	3,522
66	4,507	137	36	484	17	5,181
67	2,965	117	25	369	11	3,487
68	1,843	151	29	348	6	2,377
69	2,174	82	12	256	11	2,535
70	1,531	77	21	251	5	1,885
71	2,442	77	32	348	9	2,908
72	4,044	124	30	623	12	4,833
73	1,844	110	31	316	8	2,309
74	3,660	169	55	644	8	4,536
75	2,594	101	47	489	10	3,241
76	892	50	12	177	3	1,134
77	2,669	95	35	412	11	3,222
78	2,446	61	23	375	6	2,911
79	1,808	56	23	277	5	2,169
135	2,543	150	43	402	15	3,153
139	2,060	46	17	190	3	2,316
TOTALS	45,953	2,013	567	7,174	171	55,878

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

PRECINCT STATISTICS

Ward 6

For the Period Ending: July 31, 2009

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
1	2,447	128	39	519	8	3,141
81	4,118	278	51	710	15	5,172
82	2,148	197	21	422	11	2,799
83	2,704	193	32	500	14	3,443
84	1,789	373	31	426	7	2,626
85	2,427	518	25	586	9	3,565
86	1,938	252	31	414	8	2,643
87	2,611	207	33	449	16	3,316
88	1,839	299	22	368	3	2,531
89	2,278	642	32	643	9	3,604
90	1,385	250	13	351	9	2,008
91	3,385	305	47	720	11	4,468
127	3,445	270	60	726	16	4,517
128	1,714	172	21	464	8	2,379
130	702	307	12	247	3	1,271
131	490	93	3	110	5	701
142	1,129	165	12	271	8	1,585
143	1,856	442	24	614	13	2,949
TOTALS	38,405	5,091	509	8,540	173	52,718

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

PRECINCT STATISTICS

Ward 7

For the Period Ending: July 31, 2009

<i>PRECINCT</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
<i>80</i>	1,294	56	12	210	5	1,577
<i>92</i>	1,517	55	17	228	8	1,825
<i>93</i>	1,382	46	12	214	6	1,660
<i>94</i>	1,817	73	17	217	2	2,126
<i>95</i>	1,530	51	22	263	2	1,868
<i>96</i>	2,105	72	29	324	3	2,533
<i>97</i>	1,231	46	14	181	4	1,476
<i>98</i>	1,734	52	20	222	8	2,036
<i>99</i>	1,309	42	12	211	6	1,580
<i>100</i>	1,682	50	17	252	3	2,004
<i>101</i>	1,603	43	18	175	5	1,844
<i>102</i>	2,210	61	22	281	7	2,581
<i>103</i>	3,244	99	30	507	14	3,894
<i>104</i>	2,350	70	31	337	8	2,796
<i>105</i>	1,999	65	25	277	4	2,370
<i>106</i>	2,903	91	27	404	5	3,430
<i>107</i>	1,576	57	17	244	2	1,896
<i>108</i>	1,149	45	7	124	2	1,327
<i>109</i>	1,001	38	5	100	1	1,145
<i>110</i>	3,819	134	38	456	12	4,459
<i>111</i>	2,083	56	29	350	6	2,524
<i>112</i>	1,874	61	15	243	4	2,197
<i>113</i>	2,083	61	14	259	6	2,423
<i>132</i>	1,911	78	14	298	1	2,302
<i>TOTALS</i>	45,406	1,502	464	6,377	124	53,873

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

PRECINCT STATISTICS

Ward 8

For Period Ending: July 31, 2009

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
114	2,749	103	38	481	21	3,392
115	2,487	87	30	533	6	3,143
116	3,388	120	45	560	11	4,124
117	1,388	50	11	231	4	1,684
118	2,318	90	39	356	4	2,807
119	2,399	125	44	455	8	3,031
120	1,416	39	11	276	3	1,745
121	2,899	95	46	499	5	3,544
122	1,681	44	25	255	4	2,009
123	2,101	116	33	385	6	2,641
124	2,301	61	29	337	4	2,732
125	3,818	121	44	574	15	4,572
126	3,286	147	36	609	18	4,096
133	1,338	43	13	176	6	1,576
134	1,920	52	30	260	7	2,269
140	1,840	64	21	268	6	2,199
TOTALS	37,329	1,357	495	6,255	128	45,564

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2009

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE) located at 51 N Street, NE., Washington, D.C., intends to issue a permit to operate an existing 600 kilowatt diesel-fired emergency generator to the General Services Administration (GSA), located at 3801 Nebraska Avenue, NW, Washington, D.C. 20393.

The application for the existing diesel-fired emergency generator and the draft permit are all available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments should be addressed to:

Stephen S. Ours
Chief, Permitting and Enforcement Branch
Air Quality Division
District Department of the Environment
51 N Street, NE
Washington D.C. 20002

No written comments postmarked after September 21, 2009 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF HEALTH**BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY****PUBLIC NOTICE**

The District of Columbia Board of Audiology and Speech-Language Pathology hereby gives notice of the change of date of its regular monthly meeting scheduled for August 17, 2009, pursuant to § 405 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (“Act”).

The August 17, 2009 meeting has been changed to August 31, 2009, at 9:00 a.m. The Board of Audiology and Speech-Language Pathology meets at 717 14th Street, NW, 10th Floor, Washington, D.C. 20005.

DEPARTMENT OF HEALTH**BOARD OF SOCIAL WORK****PUBLIC NOTICE**

The District of Columbia Board of Social Work hereby gives notice of the change of its regularly scheduled monthly meeting dates pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2001) (“Act”).

Beginning Monday, September 28, 2009 the District of Columbia Board of Social Work is permanently changing its regularly scheduled monthly meeting date to the fourth Monday of each month at 10:00 a.m. The open (public) session will begin at 11:30 a.m. The Board of Social Work meets at 717 14th Street, NW, 10th Floor, Washington, D.C. 20005.

In observance of the Yom Kippur holiday, the Board’s September meeting will take place on September 21, 2009.

In observance of the Christmas holiday, the Board’s December meeting will take place on December 21, 2009.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF PARKS AND RECREATION**

NOTICE OF APPLICATION

Notice is hereby given that, pursuant to the authority set forth in § 9a D.C. Law 3-30; D.C. Official Code § 8-1808.01 (2006 Supp.) and Chapter 7 of Title 19 (Amusements, Parks and Recreation) of the District of Columbia Municipal Regulations, Section 730-735, dated December 7, 2007, that the District Department of Parks and Recreation is reviewing an application for a dog exercise area on a portion of Langdon Park (Square 4215 and Lot 820).

The proposed application seeks to install and operate an off-leash dog exercise area of approximately 13, 500 square-feet on a portion of land at Langdon Park. The proposed site is located off of 20th Street, NE behind the basketball courts. Interested parties wishing to review the application can review the application in-person at the District Department of Parks and Recreation headquarters at 3149 16th Street, NW, 1st floor.

Interested persons may submit written comments within thirty (30) days of publication of this notice. The written comments must include the person's name, telephone number, affiliation, if any, mailing address, and statement outlining the issues in dispute or support surrounding the implementation of a dog park. All relevant comments will be considered in reviewing the dog park application. **Written comments postmarked after September 21, 2009 will not be accepted.**

Address written comments to:

Office of Planning & Capital Projects
District Department of Parks and Recreation
Attn: Dog Park Comments – Upshur
3149 16th Street, NW
Washington, DC 20009

For more information, please call (202) 673-7647.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**NOTICE OF FUNDING AVAILABILITY****Consolidated Application for Local Award to Supplement Activities Under the Elementary and Secondary Education Act (ESEA), as amended, Title I, Part A, Title II, Part A, and the Individuals with Disabilities Education Act (IDEA), Part B, Section 611****RFA RELEASE DATE: August 21, 2009**

The Office of the State Superintendent of Education (OSSE), is soliciting grant proposals from eligible DC public charter schools to provide initiatives for ensuring that all children have the opportunity to obtain a high-quality education and reach proficiency on challenging state and academic standards and assessments. By awarding these funds, OSSE is seeking to support those DC public charter schools that will experience a significant decrease in funding as a result of the removal of preschool students from OSSE's Title I, Part A, Title II, Part A and IDEA, Part B, Section 611 allocation process.

CONTACT PERSON: Jeremy Skinner
Office of the State Superintendent of Education
Government for the District of Columbia
51 N Street, N.E.
Washington, D.C. 20002
Tele: 202-724-2343
Fax: 202-724-7656
jeremy.skinner@dc.gov

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**

Application No. 17562-A of W Street, S.E. 38-42-43, L.L.C., pursuant to 11 DCMR § 3104.1, for a special exception to construct five three-unit multiple dwellings¹ under § 353, in the R-5-A district at premises 1749-1759 W Street, S.E. (Square 5755, Lots 38-43).²

HEARING DATES January 30, 2007 and April 10, 2007

DECISION DATES: March 6, 2007 and April 10, 2007

**DATE OF DECISION
ON REQUEST FOR**

MODIFICATION: June 23, 2009

**DECISION AND ORDER ON REQUEST FOR MODIFICATION
AND EXTENSION OF TIME WITHIN WHICH TO BEGIN CONSTRUCTION**

PRELIMINARY MATTERS

On September 28, 2006, this application was submitted by W Street, S.E. 38-42-43, LLC (“Applicant”), the owner of the property that is the subject of this application (“subject property”). The original plans showed parking in the front yard area, for which a variance was requested. During the proceedings on this application, the location of the parking was changed to the rear yard, obviating the need for the parking variance.

The original application/plans also showed six three-unit attached buildings, for a total of 18 units. This Board (“BZA” or “Board”), expressed concern with the density of the project and the Applicant reduced the project to five buildings, with three units per building, for a total of 15 units. The Applicant submitted an amended application and new plans to the Board formalizing the changes. Exhibit No. 41.

Although the Office of Planning (“OP”) had supported the original request for 18 units (Exhibit No. 25), it stated in its February 23, 2007 Supplemental Report, at 1-2, that:

[i]t is OP’s position that a reduced project [from 18 units to 15] would be more sensitive to the existing neighborhood character at the eastern portion of the

¹Although the original advertisement used the term “three-unit row dwellings,” by definition, a row dwelling cannot have more than one residential “unit” because it is defined as a “one-family dwelling having no side yards,” and a “one-family dwelling” must, by definition, be used “exclusively as a residence for one (1) family.” 11 DCMR § 199.1.

²The application was originally advertised for a variance from parking requirements as well as for the special exception relief, but the parking variance was obviated by a change in plans. Also, the original advertisement was for six structures, but was changed to five in response to concerns from the neighborhood and the Board of Zoning Adjustment. Lastly, although the originally-advertised zone district, R-5-A, has been retained here, the zoning of the subject property has been changed to R-3 since the time of the hearing on this application.

BZA APPLICATION NO. 17562-A
PAGE NO. 2

subject block, and more in keeping with the development expectations of neighborhood residents. DHCD also recommended reducing the project.

Exhibit No. 36.

At the conclusion of the hearing, the Board decided to grant the revised application. Order No. 17562, permitting five three-unit attached buildings, was issued on May 29, 2007, making it effective on June 8, 2007. As with all Board orders, Order No. 17562 was valid for a period of two years from its effective date, *i.e.*, until June 8, 2009, unless plans were filed to obtain buildings permits within this two-year period. 11 DCMR § 3130.1. The Applicant obtained building permits on October 10, 2008, but 11 DCMR § 3130.3 further requires that construction of the project for which the permits were obtained must begin within six months of their issuance, which would have been by April 10, 2009.

After moving expeditiously toward construction and receiving the building permits on October 10, 2008, the Applicant was stopped by the inability of the Department of Housing and Community Development (“DHCD”) to provide previously-arranged-for financing. Due to the recent serious economic downturn experienced by the District of Columbia and the nation, the DHCD cannot provide the Applicant gap financing through its Housing Production Trust Fund Program. Also due to the poor economy, the projected sales prices for the project’s large duplex units have dropped, making the project with 15 larger units economically infeasible. Therefore, on May 29, 2009, the Applicant filed this request to modify its plans in order to construct 18 smaller units, but within the same five buildings as approved by the Board.

The Applicant requested three specific items of relief: (1) “minor” modification of the plans back up to 18 units, (2) waiver of § 3129.3’s requirement that a modification request be filed within six months of the Board’s approval of the application,³ and (3) waiver of § 3130.3, which requires that construction begin within six months of the date of building permit issuance. Both requested waivers would be permitted by 11 DCMR § 3100.5, which requires three showings: good cause, no prejudice to any party, and no legal prohibition.

FINDINGS OF FACT

Request for Modification

1. Order No. 17562, issued on May 29, 2007, and effective on June 8, 2007, permitted the Applicant to construct five attached buildings, each with three residential units, at address 1749-1759 W Street, S.E.
2. When the application was heard by the Board and the Order issued, the subject property was situated in an R-5-A zone district.

³This relief is no longer necessary because § 3129.3 was changed, as of June 5, 2009, to allow a modification request to be filed within two years of the date of the final order approving the application. The final order (Order No. 17562) was dated May 29, 2007, and the Applicant filed its request for modification on May 29, 2009.

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3. Section 353 requires that all new residential development in an R-5-A zone that includes multiple dwellings be reviewed by the Board as a special exception.
4. On November 14, 2008, Zoning Commission Order No. 08-12 re-zoned to R-3 the Square and lots that comprise the subject property.
5. Neither multiple dwellings nor flats are permitted in R-3 zone districts. 11 DCMR § 320.3.
6. Applicant's approved plans for five three-unit buildings would still be permitted in the R-3 zone because Order No. 17562, granting permission to build them, pre-dated the zone change. If they were constructed, they would be nonconforming structures. 11 DCMR § 199.1, definition of "Nonconforming structure."
7. On May 29, 2009, the Applicant filed a request to modify its plans. The requested modification would result in the same exterior building configuration as that which was approved by Order No. 17562, but would also result in an increase in density from 15 to 18 dwelling units.
8. None of the other parameters of the buildings will change, i.e., the floor area ratio and footprint of the five attached buildings will remain the same.
9. During the hearing on the application, the density of the project was an issue of concern for the Board. See, e.g., January 30, 2007 Hearing Transcript at 130, lines 7-12.
10. The density of the project, i.e., the total number of units, is a material fact upon which the Board based its original approval of the application.
11. Section 3129.7, effective June 5, 2009, provides that when a modification is not "minor," i.e., when it changes a material fact upon which the Board based its original approval of an application, a hearing is required.

Request for Extension

12. The Applicant was issued six building permits on October 10, 2008, allowing it to construct the project on the subject property.
13. Due to the loss of its financial backing, the Applicant was unable to begin construction within six months of the permits' issuance, as required by 11 DCMR § 3130.3.
14. The loss of financial backing was beyond the Applicant's control, being due to the serious economic downturn in the District and the nation, of which the Board takes administrative notice.
15. Financing is crucial to construction of this, and every, project, and without it, construction is not possible.

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16. The ANC was originally opposed to this application, but its concerns were largely met by changes to the plans, and there has been no opposition filed to this request for modification.
17. Section 3130.3 is not one of the Zoning Regulations which the Board is prohibited from waiving (See, 11 DCMR § 3100.5), so its waiver is not prohibited by law.

CONCLUSIONS OF LAW

Request for Modification

Section 3129 allows the Board to grant, without a hearing, minor modifications of plans already approved by the Board. Only minor modifications may be allowed without a hearing. Any requested modification which is not minor would require a hearing. Such is the case here.

The Applicant, although not changing the footprint of the buildings, is requesting a 20% increase in the density of the project. The Board finds that this is not “minor,” particularly in view of the fact that a density of 18 units, which was the density originally applied for, was considered by the Board and the neighborhood to be too dense. *See, e.g.*, January 30, 2007 Hearing Transcript at 81, lines 9-10, and April 10, 2007 Hearing Transcript at pp. 169 - 171. The reduced density of the project, from 18 units to 15, was a material fact relied upon by the Board in deciding to approve the application. A change in this material fact removes the modification request from the category of “minor” modifications. 11 DCMR § 3129.6. Moreover, the zoning of the subject property has been changed from R-5-A to R-3, permitting even less density than the 15 units now permitted by Order No. 17562. Neither flats nor multiple dwellings are permitted by right in an R-3 district, and arguably, the Applicant would need use variance relief to increase the project’s unit total to 18.

Because this is not a “minor” modification, the Board cannot grant it pursuant to § 3129. If it is to be granted, a hearing must first be held. 11 DCMR § 3129.7.

Request for Extension

Section 3100.5 permits the Board to waive many of the Zoning Regulations if there is good cause shown, no prejudice to any party, and such waiver is not prohibited by law. 11 DCMR § 3100.5.

The Applicant is requesting that the Board, pursuant to § 3100.5, waive the requirement of § 3130.3 that construction begin within six months of building permit issuance. As a preliminary matter, the Board finds that such a waiver is not prohibited by law. Nor would such a waiver prejudice any party. There were no parties in opposition to the request for modification/extension.

The Board also finds good cause for the waiver. The Applicant has shown that it diligently pursued completion of this project (*See*, Exhibit No 50, Attachment B), culminating in the issuance of six building permits on October 10, 2008. Only one month later, in November, 2008,

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DHCD notified the Applicant that no funds were available to finance its project. In November, 2008, the country was in the midst of the economic downturn administratively-noticed by the Board in Finding of Fact No. 15. The downturn continued for six months after the issuance of the building permits, and, indeed, continues today. The Applicant could not proceed without the DHCD funding and has therefore requested an extension of the § 3130.3 six-month period to a period of one year from the date of this order. The Board concludes that the Applicant has shown good cause for this extension, that it would not prejudice any party, and that it is not prohibited by law.

For all the reasons stated above, the Board has determined that the request for modification/extension may be partially denied and partially granted:

1. The requested modification of plans is not “minor” and so cannot be granted without a hearing. Accordingly, the request for modification of plans is hereby **ORDERED DENIED**.
2. The requested extension of the six-month period set forth in § 3130.3 to a period of one year from the date of effectiveness of this order is hereby **ORDERED GRANTED**.

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

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

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

FINAL DATE OF ORDER: AUGUST 12, 2009

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

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

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17848-A 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.

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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.

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

Application No. 17875 of BB & H Joint Venture, on behalf of Potomac Foods Company, pursuant to 11 DCMR 3104.1, for a special exception to permit the continued use of an accessory parking lot serving a Burger King restaurant under section 214 of the Zoning Regulations, in the R-1-B District at premises Rear 4422 Connecticut Avenue, N.W. (Square 1971, Lot 822).

HEARING DATE: February 3, 2009

DECISION DATE: March 3, 2009

SUMMARY ORDER

Self-Certification

The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2. The request did not include relief from § 2116.1, which requires that all parking, whether required or not, be located on the lot of the building they serve. These spaces serve a Burger King restaurant located on a different lot. The Board is authorized to grant relief from that provision as a special exception pursuant to § 2216.5, and appears to have implicitly done so in the past as to these accessory spaces.

Notice of Application and Notice of Hearing

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3F, which is automatically a party to this application.

ANC Report

The ANC submitted a report in support of the continued use of the property as an accessory parking lot.¹ (Exhibit 34) The ANC report contained proposed conditions for the special exception use, some of which differed from conditions that were proposed by the Applicant and the Office of Planning (OP). The ANC proposed that the special exception term be limited to two years, while the Applicant sought a ten year term.

OP Report

OP also submitted a report in support of the continued use of the property as an accessory parking lot. (Exhibit 25). The OP originally proposed that the special exception term be set for ten years, but during testimony at the public hearing, OP recommended a five year term. OP also pointed out that the Applicant had failed to comply with several of the conditions in the previous BZA order.

¹ Although the ANC report was untimely filed, the Board waived its rules to accept the report into the record.

BZA APPLICATION NO. 17875**PAGE NO. 2****The ANC Issues and Concerns**

The Board is required under Section 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Code § 1-309.10(d)(3)(A), to give “great weight” to the issues and concerns raised by the affected ANC. To give great weight the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances, and make specific findings and conclusions with respect to each of the ANC’s issues and concerns. As stated, the ANC did not oppose the application, but it did oppose the Applicant’s request for a ten year term, citing a history of non-compliance with prior Board orders and problems with noise and rodents at the site. The ANC maintained that nearby residential properties were affected by truck noise and rodent infestation at the site, and that both of these conditions stemmed from the trash dumpsters at the accessory parking lot. Because the Board finds the ANC’s concerns to be legitimate, it is adopting a three year term instead of the ten year term requested by the Applicant, and is also requiring that the dumpsters be removed from the accessory lot.²

The OP Recommendations

The Board is also required under D.C. Official Code §6-623.04 (2001) to give “great weight” to OP recommendations. While OP recommended continuing most of the conditions imposed in previous orders, it advised that the Board should approve the application for a term of five years. OP provided a cogent rationale with respect to several of the proposed conditions. However, as discussed previously, the Board was not persuaded it should incorporate all of the proposed conditions, or that the term should be for more than three years.

Approval for Continued Use as Accessory Parking Lot

As directed by section 3119.2 of the Zoning Regulations, the Board has required the Applicant to satisfy the burden of proving the general conditions for a special exception under section 3104.1, and the specific conditions for an accessory parking lot under section 214. No parties appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof pursuant to sections 3104.1 and 214. The Board considered the conditions proposed by the Applicant, the ANC and the OP, and also considered the Applicant’s history of non-compliance with conditions of prior Board orders, and the adverse impacts on neighboring property owners which resulted from the dumpsters. In conclusion, the Board found that the requested relief could be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the

² The dumpsters serve the Burger King lot, not the accessory parking lot, and the Board finds they have no place on a residentially zoned lot. The Board also finds that locating the dumpsters on the accessory parking lot runs afoul of section 2303.1(c), which prohibits all “structure[s]” on a parking lot, with the exception of an attendant shelter.

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Zoning Regulations and Map. The Board further concluded that, subject to the conditions set forth below, the requested relief will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to section 3101.6 of the Regulations, the Board has determined to waive the requirement of section 3125.3, the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED** subject to the following **CONDITIONS**:

1. The application shall be approved for a period of **THREE (3) YEARS**.
2. The dumpsters shall be removed from the accessory parking lot.
3. At no time shall delivery, vendor, or trash trucks be permitted to enter the accessory parking lot.
4. Two trash cans shall be maintained on the parking lot and emptied at least once per day, or more often if they are overflowing with trash.
5. The parking surface and fence along the western boundary of the site shall be maintained in good condition at all times. All parts of the lot shall be kept free of refuse and debris. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance, and the trees located on the property shall be pruned at least once per year.
6. An exterminator shall perform extermination services twice a month to control any rodents. In addition, the portion of the fence owned by the Applicant and located on the property shall be reinforced underground to help prevent any rodents from entering the neighbors' properties.
7. The Applicant shall appoint a neighborhood and ANC liaison. The Applicant shall notify the ANC and all residences within 200 feet of the property of the name, telephone number, and e-mail address of the appointed liaison. When that individual is no longer designated to act as the liaison, the Applicant shall use the same procedure to notify the neighborhood of his or her successor.
8. The Applicant shall provide to the ANC and the residences within 200 feet an annual report summarizing its compliance with the conditions.
9. Existing wheel stops, signage, guardrail, parking space striping, and direction signage painted on the pavement shall be properly maintained.
10. The Applicant shall, as necessary, repaint and maintain the entrance and exit directional arrows on the surface of the parking lot.

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

Vote taken on March 3, 2009

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

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

FINAL DATE OF ORDER: AUGUST 12, 2009

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

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

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

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

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., 9 (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT IN ADDITION, HARASSMENT BASED ON ANY OF

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THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

SG

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No 17906 of Se Y. Jeong, pursuant to 11 DCMR § 3104.1, for a special exception to change a nonconforming use from a grocery store to a grocery store with delicatessen under sections 2002 and 2003, in the R-4 District at premises 321 T Street, N.E. (Square 3567, Lot 804).

HEARING DATE: April 14, 2009

DECISION DATE: April 14, 2009

DISMISSAL ORDER

On October 30, 2008, Mr. Endale Terefa filed an application with the Board of Zoning Adjustment (“BZA” or “Board”) on behalf of, and with the permission of Mr. Se Y. Jeong, the owner of the property which is the subject of this application. Although Mr. Jeong owns the subject property, Mr. Terefa operates the grocery store for which the zoning relief was sought. Therefore, the term “Applicant” herein will refer to Mr. Terefa.

The self-certified application requested special exception relief to add the sale of prepared sandwiches, donuts, hot coffee, tea, and cooked hot dogs to a nonconforming grocery store use located in an R-4 zone district. The Board held a properly-noticed public hearing on the application on April 14, 2009, and, at the conclusion of the hearing, decided that zoning relief was not necessary and therefore, by a vote of 3-0-2, dismissed the case. The factual and legal bases for this decision follow.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated November 4, 2008, the Office of Zoning (“OZ”) gave notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation, the Council Member for Ward 5, Advisory Neighborhood Commission 5C (“ANC 5C”), and the Single Member District member for 5C05. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register* and sent such notice to the Applicant, ANC 5C, and all owners of property within 200 feet of the subject property.

Requests for Party Status. ANC 5C was automatically a party to this application, but did not file a report with the Board or participate in the case in any way. There were no requests for party status.

Applicant’s Case. The Applicant appeared before the Board and explained the nature of his grocery operation and his request for relief.

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Government Reports. The Office of Planning filed a report with the Board on April 7, 2009, recommending approval of the application. OP reviewed the application as a request for a special exception to add an “accessory prepared food shop” to the existing grocery store. In its analysis, OP examined the impacts of the grocery store, both as it exists now, and with the requested addition of hot coffee, tea, and cooked hot dogs, and opined that “[t]he proposal would not change the present character or future development of the surrounding area” and “would not cause any substantial detriment to the public good or substantially impairing (sic) the intent, purpose and integrity of the Zoning Regulations and Map.” Exhibit No. 20.

ANC Report. No ANC report was filed with the Board.

Persons in Support or Opposition. No persons appeared to testify in support or opposition, but the Board received one letter in opposition and a petition with approximately 55 names in support.

FINDINGS OF FACTThe property, the use, and the surrounding neighborhood

1. The subject property is located in an R-4 zone district at address 321 T Street, N.E. It is improved with a 2-story building constructed before May 12, 1958, the effective date of the current version of the Zoning Regulations. The building is mixed-use with commercial use on the ground floor and residential use on the upper floor, and apparently has been so used since its construction.
2. The neighborhood surrounding the subject property is predominantly developed with row dwellings, but directly adjacent to the property on the west is a two-story building with a ground floor commercial use and residential use above.
3. Immediately adjacent to the property to the east and south is a public alley. This alley is 10.5 feet wide along the property’s eastern boundary and curves around behind (*i.e.*, south of) the property, where it widens to 15 feet.
4. To the east and south of the property, on the other side of the alley, is a three-story senior citizen apartment building.
5. For approximately the last five years, the Applicant has operated a nonconforming grocery store on the ground floor of the building on the subject property in which he offers for sale traditional grocery items, such as bread, cheese, eggs, milk, soda, candy, paper towels, cleaning supplies, cigarettes, and over-the-counter medicines, as well as beer and wine.
6. Over approximately the last two years, the Applicant’s grocery has experienced a downturn in grocery sales. Prior to this time, approximately 45% of all sales were of standard grocery items, approximately 15-20% were of cigarettes, and approximately 15-20% were of beer and wine. Hearing Transcript (“Trans.”) at p. 41, lines 11-18.

BZA APPLICATION NO. 17906**PAGE NO. 3**The Applicant's Proposal

7. The Applicant proposes to add to his grocery store the sale of prepared sandwiches, donuts, hot coffee, tea, and cooked hot dogs in order to better serve the local community and improve his business.
8. In order to accommodate the addition of prepared sandwiches, donuts, hot coffee, tea, and cooked hot dogs, the Applicant will need to install a coffee machine and a "hot dog machine" to warm and turn the hot dogs. These machines will be placed on an existing food display case.
9. No other changes will be made to the interior or the exterior of either the grocery store or the building on the subject property to enable the Applicant to sell prepared sandwiches, donuts, hot coffee, tea, and cooked hot dogs.
10. Nothing else will be added to the grocery use as it already exists and no cooking, other than the minimal cooking necessary for coffee, tea, and hot dogs, will take place in the store.

Whether zoning relief is needed

11. The Applicant, on his self-certification form, checked the boxes for both use variance relief and special exception relief, noting under the latter §§ 2002.1 and 2003. Exhibit No 4.
12. The application was advertised for special exception relief to "change a nonconforming use from a grocery store to a grocery store with delicatessen" pursuant to 11 DCMR §§ 2002 and 2003.
13. "Delicatessen" is not a use recognized in the Zoning Regulations.
14. Apparently on the advice of the Zoning Administrator, the Office of Planning reviewed the application as one for a special exception pursuant to § 2003 to permit the addition of "an accessory prepared food shop" to the already-existing grocery store use. Exhibit No. 20, at 1.
15. A "prepared food shop" is defined by the Zoning Regulations as "a *place of business* that offers seating or carry-out service, or both, and which is *principally* devoted to the sale of prepared food, non-alcoholic beverages, or cold refreshments. This term includes an establishment known as a sandwich shop, coffee shop, or an ice cream parlor." 11 DCMR § 199.1 (Emphasis added.)
16. An "accessory use" is a use that is not permitted as a matter of right in the zone district where a principal use is located, but which is "customarily incidental and subordinate to the principal use." 11 DCMR § 199.1.

BZA APPLICATION NO. 17906**PAGE NO. 4****CONCLUSIONS OF LAW**

The Applicant currently operates a grocery store. Neither “grocer” nor “grocery store” is defined in the Zoning Regulations, but “grocer” is defined in Webster’s Unabridged Dictionary as “a dealer in staple foodstuffs (as coffee, sugar, flour) and usually meats and other foods (as fruits, vegetables, dairy products) and many household supplies (as soap, matches, paper napkins).” Similarly, Webster’s defines “grocery store” as “the place of business of a retail grocer.” *See*, 11 DCMR § 199.2(g).

Grocery stores today also sell a multiplicity of items that might not be traditionally categorized as “groceries,” such as periodicals, flowers, and DVDs. They also often provide services which would be considered outside the traditional ambit of a grocery store, such as banking services via ATM machines, preparing hot coffee or tea or even hot dogs or other simple food items. *See, e.g., Sevilla v. Sweat*, 450 P.2d 424 (Ariz. App. 1969). *See also, Purity Stores v. Linda Mar Shopping Center, Inc.*, 177 Cal. App. 2d 568, 572-573 (Cal. App. Div. 1 1960); Board of Zoning Adjustment Order No. 17675 of the Reed-Cooke Neighborhood Ass’n. (2008).

An accessory use is, as defined, a use that is customarily incidental and subordinate to a principal use. A use can only be “accessory,” however, if it is a use otherwise not allowed in the zone in which the principal use is allowed. In this way, a zone allows principal uses and can allow other uses, which would otherwise be disallowed, as “accessory uses” to the principal use. As long as the “accessory uses” remain “incidental and subordinate” to the principal use, and therefore, do not in and of themselves rise to the level of separate principal uses, they are allowed as well.

On the other hand, if something is already allowed in a zone, it can never be termed an “accessory use” – it is either a part of a principal use or a stand-alone principal use, depending on its magnitude. In this case, although the grocery is nonconforming in its R-4 zone, a grocery is first allowed in a C-1 zone, where a prepared food shop is also allowed, therefore, the prepared food shop can never be “accessory” to the grocery.

A prepared food shop, as defined by the Zoning Regulations (*see*, Finding of Fact No. 15) is not a true grocery store, although it too may sell “traditional” grocery items such as pre-packaged ground coffee. Conversely, grocery stores may sell prepared foods. Unless the extent to which the sale of prepared food rises to the level where it might be considered a separate principal use, there is no “other” use and no requirement for a grocery to obtain an additional certificate of occupancy for that use. Because a prepared food shop is permitted in the same zone district as a grocery and it must consist of a “place of business,” the incidental sale of prepared food by a grocery can never be characterized as an accessory use. Instead, it is merely a part of the principal grocery use.

Even with the added sales of prepared sandwiches, donuts, hot coffee, tea, and hot dogs, the Applicant’s grocery store is not principally devoted to the sale of prepared food. Because the sale of prepared food is part of the principal use, no new C of O or amendment to the existing C of O is required. The fact that the grocery is a non-conforming use does not change this

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analysis. The analysis of whether a use is accessory is based upon the zone district where the non-conforming use is first permitted.

For this same reason, the Board does not view the proposed sale of prepared food to constitute an expansion disallowed by 11 DCMR § 2000.2. The Board concludes that the addition of the sale of prepared sandwiches, donuts, hot coffee, tea, and cooked hot dogs is not an “expansion” of the grocery use, but an inherent part of that use. Therefore, the Board concludes that the addition of those five items – and nothing more – to the Applicant’s grocery store does not require zoning relief. *Cf. Sevilla*, at 427. (“We cannot say as a matter of law that the ordinary operation of a grocery store does not include package beer and wine sales and that to add these sales to a [nonconforming] grocery store business would constitute a new or extended use.”)

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. ANC 2C did not file a report with the Board, so there is nothing to which the Board can accord “great weight.”

The Office of Planning recommended approval of a special exception for an “accessory prepared food shop,” as the name for the use which most closely approximated the Applicant’s proposal and also corresponded with a definition in the Zoning Regulations. During the hearing, however, the OP representative made clear that OP was uncertain whether relief was needed, and was persuaded it was needed largely by the “authority of the Zoning Administrator” in sending the Applicant for zoning relief. *Trans.* at p. 55, lines 2-12. When questioned whether, in the absence of a referral from the Zoning Administrator, OP would have determined that the Applicant needed relief, the OP representative replied that without such a referral, the Applicant “didn’t need an application. He already operated a grocery store and that what he’s proposing was just part of what’s usually in a grocery store.” *Trans.* at p. 56, lines 12-19 and 57, lines 1-3. OP and the Board are therefore in agreement that the proposal does not amount to any sort of new use, but is an inherent part of a grocery store use.

Accordingly, it is **ORDERED** that Applicant’s request for zoning relief is **DISMISSED**.

VOTE: **3-0-2** (Marc D. Loud, Shane L. Dettman, and Michael G. Turnbull to DISMISS; the other two seats being vacant, no other Board member participating or voting)

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

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

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FINAL DATE OF ORDER: AUGUST 11, 2009

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

LM

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 09-14
(Consolidated PUD and Related Map Amendment
@ Square 1672, Lots 803, 804, 812, and 815)
August 12, 2009**

THIS CASE IS OF INTEREST TO ANC 3E

On August 11, 2009, the Office of Zoning received an application from Safeway, Inc. (the "Applicant") for approval of a consolidated PUD and a related map amendment for the above-referenced property.

The property that is the subject of this application consists of Square 1672, Lots 803, 804, 812, and 815 in Northwest Washington, D.C. (Ward 3) at 4203 Davenport Street, N.W. The property is currently zoned as follows: Lot 803 is zoned C-2-A; Lot 804 is zoned R-3; Lot 812 is zoned R-2; and Lot 815 is zoned C-2-A/R-2. The Applicant proposes a map amendment to upzone the R-2 and R-3 zoned properties to C-1 and the C-2-A/R-2 zoned property to C-2-A/C-1.

The Applicant proposes to raze the existing structure and construct a new full-service grocery store. The new store would be a 58,000 square-foot "Lifestyle" model, which would include outdoor café seating. It would include structured parking above ground. Safeway, Inc. is currently pursuing LEED Certification for their prototype store design. The proposed project will have a density of 0.91 FAR and maximum height of 36'-8."

For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.