

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

**PUBLIC NOTICE**

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

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

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

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

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

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

*This schedule is subject to change.*

**COMMUNITY ACADEMY PUBLIC CHARTER SCHOOL (CAPCS)****REQUEST FOR PROPOSALS****Operating a School Store**

Community Academy Public Charter School (CAPCS), with offices at 1351 Nicholson Street, NW, in accordance with section 31-2801,2853 14 of the District of Columbia Reform Act of 1995, is soliciting proposals from qualified vendors to operate a school store in a 600 sq. ft. space in the school building at 1400 First Street, NW. Vendor will be responsible for all aspects of store operation, including but not limited to providing merchandise, inventory management, sales personnel, quality control, etc. Merchandise selection, pricing, profit sharing, and store hours will be worked out jointly by the school and the vendor. Proposals must include merchandise options, pricing, and experience. LSBDE firms are encouraged to respond. CAPCS RESERVES THE RIGHT TO CANCEL THIS RFP AT ANY TIME. For a scope of work, contact Wesley Harvey at [wesleyharvey@capcs.org](mailto:wesleyharvey@capcs.org) or 202-234-5437. **Final bids are due on Tuesday, September 8, 2009.**

## DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PUBLIC INTEREST

The following is a listing of raze permit applications filed with the Permit Operations Division of the Department of Consumer and Regulatory Affairs:

Application Date	Address	Lot	Square	Use
August 3, 2009	3612 Legation Street, NW	42	1993	1-story single family building
August 5, 2009	717 2 <sup>nd</sup> Street, NE	48	752	Commercial building
August 6, 2009	721 2 <sup>nd</sup> Street, NE	811	752	Row house
August 6, 2009	723 2 <sup>nd</sup> Street, NE	813	752	Row house
August 6, 2009	725 2 <sup>nd</sup> Street, NE	814	752	Row house
August 6, 2009	727 2 <sup>nd</sup> Street, NE	856	752	Row house
August 10, 2009	1717 East Capitol Street, SE	53	1096	2-story building with cellar
August 10, 2009	1711 East Capitol Street, SE	52	1096	2-story building with cellar
August 10, 2009	1723 East Capitol Street, SE	54	1096	2-story building with cellar
August 10, 2009	1705 East Capitol Street, SE	51	1096	2-story building with cellar
August 10, 2009	1729 East Capitol Street, SE	55	1096	2-story building with cellar
August 19, 2009	320 Kennedy Street, NE	3	3766	2-story apartment building
August 19, 2009	1701 Gales Street, NE	802	4533	2-story commercial building
August 21, 2009	3233 E Street, SE	809	5451	1-story single family development
August 21, 2009	5604 Broad Branch Road, NW	75	1997	2-story single family development

For further information, please contact Mr. Tyrone Thomas at the Permit Operations Division via email at Tyrone.Thomas2@dcra.gov or Ms. Cheryl Randall Thomas, Manager of the Permit Center, at (202) 442-4534.

**ELSIE WHITLOW STOKES COMMUNITY FREEDOM PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Speech and Language Pathologists**

**The Elsie Whitlow Stokes Community Freedom Public Charter School, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995, hereby solicits expressions of interest from** licensed speech and language pathologists to provide bilingual (Spanish/English) services including: direct services to students including ongoing assessment and progress reporting; development of IEPs and participation in IEP meetings; initial evaluations; early childhood screenings; and collaboration with classroom teachers.

**Deadline for all proposal submission responses must be received by COB September 11, 2009. Please send two hard copies of the proposal to:**

**Erika Bryant  
Director of Operations  
Elsie Whitlow Stokes Community Freedom Public Charter School  
3700 Oakview Terrace, NE  
Washington, DC 20017  
(202) 265-7237 x 103**

**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 one (1) 80 kW diesel emergency generator at the FLO TV Corporation property located at 6001 Georgia Avenue NW, Washington DC 20011.

The application to operate the 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, 5<sup>th</sup> Floor  
Washington D.C. 20002

**No written comments postmarked after September 28, 2009 will be accepted.**

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

**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 September 15, 2009.

Comments on these appointments should be submitted, in writing, to Naomi Shelton, Administrator, Office of Notary Commissions and Authentications, 441 4<sup>th</sup> 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 September 4, 2008. 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](http://www.os.dc.gov).

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Allen	Charles W.	The QED Group, LLC 1250 Eye Street, NW, Suite 1100	20005
Bailey	Titania R.	Finnegan, Henderson, Farabow, Garrett & Dunner LLP 901 New York Avenue, NW	20001
Burley	Barbara A.	US Court of Appeals for the Armed Forces 450 E Street, NW	20442
Bustamante	Jessenia I.	Lewis & Tompkins, P.C. 927 15th Street, NW, 9th Floor	20005
Butler	Yvonne	Jenner & Block 1099 New York Avenue, NW, Suite 900	20001
Byers	Angela N.	Carr Maloney PC 1615 L Street, NW, Suite 500	20036
Caraos	Ma E.	Raymond James & Associates, Incorporated 1825 Eye Street, NW	20006
Carr	Sheronda L.	National Association of Home Builders 1201 15th Street, NW	20005
Costello	Joseph R.	ICI Mutual Insurance Company 1401 H Street, NW, Suite 1000	20005
Davis	Sylvia A.	Pillsbury Winthrop Shaw Pittman, LLP 2300 N Street, NW	20037
Davis	Betty J.	Wiley Rein LLP 1776 K Street, NW	20006
Dompere	Kwaku K.	TD Bank 605 14th Street, NW	20005
Dow	Katheryn M.	American International Health Alliance 1250 Eye Street, NW, Suite 350	20005

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D'Sena	Janice D.	American Association of State Colleges and Universities 1307 New York Avenue, NW, Suite 500	20005
Dudley	Timothy A.	Dudley Pro Realty, LLC 2101 Rhode island Avenue, NE	20018
Elzie	Fawn	Saul Ewing, LLP 2600 Virginia Avenue, NW, Suite 1000	20037
Fantaw	Siheen W.	Georgetown University Hospital 3800 Reservoir Road, NW	20007
Fernandez	Patricia	National Association of Counties 25 Massachusetts Avenue, NW, Suite 500	20001
Fish	William D.	Will Fish 1368 Randolph Street, NW	20011
Fitzpatrick	Ryan G.	DVA Federal Credit Union 810 Vermont Avenue, NW, RM C27	20420
Foley	Catherine M.	Pillsbury Winthrop Shaw Pittman, LLP 2300 N Street, NW	20037
Fox	Christine	Bradford Associates Court Reporters 1050 17th Street, NW, Suite 600	20036
Galowin	Melissa	AFL-CIO 815 16th Street, NW	20006
Gerrity	Jean M.	McKissack & McKissack of Washington, Incorporated 1401 New York Avenue, NW, Suite 900	20005
Goedecke	Edward J.	Bank of Georgetown 1054 31st Street, NW, Suite 18	20007
Gordon	Tammy	TD Bank 901 7th Street, NW	20001
Green	Shirley L.	Self 1216 Decatur Street, NW	20011

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Griffin	Christine G.	LAD Reporting Company 1325 G Street, NW, 2nd Floor	20005
Haertel	Christina C.	Broughton Construction 1050 17th Street, NW, Suite 440	20036
Hall	Candance	Paralyzed Veterans of America 801 18th Street, NW	20006
Hardy	Maria	Medical Laboratory & Technology Consultants, LLC 1776 Eye Street, NW, 9th Floor	20006
Higgins	Alice R.	Self 3433 Wisconsin Avenue, NW	20016
Hill-Usher	LaRhonda	Edwards Angell Palmer & Dodge LLP 1875 Eye Street, NW, 11th Floor	20006
Jackson	Tania B.	National Association of Minority Contractors 2307 Skyland Place, SE, Suite A	20020
Jackson	Kim	Financial Industry Regulatory Authority (FINRA) 1735 K Street, NW	20006
Johnson	Jessica	Chevy Chase Bank 1075 5th Street, NW	20001
Johnson	Patricia R.	DC Child and Family Services 400 6th Street, SW	20024
Lemke	Stephanie M.	Duane Morris LLP 505 9th Street, NW, Suite 1000	20004
Lewis	Lisa I.	Institute of International Education 1400 K Street, NW, Suite 650	20005
Lightfoot	Frankie D.	DC Department of Corrections 1923 Vermont Avenue, NW	20001
Lochmiller	Margaux S.	Morgan, Stanley, Smith, Barney, LLC 1747 Pennsylvania Avenue, NW, Suite 500	20006

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Ludd	Clement A.	Self 4426 Falls Terrace, SE, #1	20019
Marshall	Helen A.	American Political Science Association 1527 New Hampshire Avenue, NW	20036
Mathis	Valerie C.	Feldesman Tucker Leifer Fidell LLP 2001 L Street, NW, 2nd Floor	20036
Matthews	Daniela A.	Curtis, Mallet-Prevost, Colt & Mosie LLP 1200 New Hampshire Ave., NW, Suite 430	20036
McCord	Jennifer	London & Mead 1225 19th Street, NW, Suite 320	20036
McHargh	Spencer W.	NARFE Premier Federal Credit Union 445 12th Street, SW	20554
Meleance	Monique	Self 721 Oglethorpe Street, NW	20011
Moody	Ann M.	Shapiro, Lifschitz and Schram, PC 1742 N Street, NW	20036
Nam	Stacy Choi	Coburn & Coffman PLLC 1244 19th Street, NW	20036
Nicely	Paula D.	Covington & Burling LLP 1201 Pennsylvania Avenue, NW	20004
Nicholson	Michelle Y.	Building Owners and Managers Association Int'l 1101 15th Street, NW, Suite 800	20005
Norman	Tia	TD Bank 1753 Connecticut Avenue, NW	20009
Palmer	Eddie	The UPS Store 1419 37th Street, NW	20007
Parsons	Terri L.	Duncan & Allen 1575 Eye Street, NW, Suite 300	20005

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Penn	Gwendolyn M.	Law Office of Eric M. May, PC 1718 Connecticut Avenue, NW, Suite 700	20009
Phillips	Vincent L.	Self 4421 Ord Street, NE	20019
Plaza	Lilian	Pesante & Mackin, LLP 1328 H Street, NE	20002
Price	Sonia P.	Ropes & Gray LLP 700 12th Street, NW, Suite 900	20005
Randall	Ivory G.	Financial Industry Regulatory Authority (FINRA) 1735 K Street, NW	20006
Rooney	Colleen	Caring Hands Services, Incorporated 430 M Street, SW, #N106	20024
Roseborough	Donna S.	National Assembly on School Based Healthcare (NASBHC) 1100 G Street, NW, Suite 735	20005
Ross	Benjamin S.	Diversified Reporting Services, Incorporated 1101 Sixteenth Street, NW, 2nd Floor	20036
Ruffner	Patrick D.	LAD Reporting Company 1325 G Street, NW, 2nd Floor	20005
Saunders	Stephanie R.	A & R Management 201 58th Street, NE	20019
Schmidt	Suzette	Intelsat Corporation 3400 International Drive, NW	20008
Silverberg	Carol C.	US Department of Justice Tax Division, Appellate Section 950 Pennsylvania Avenue, NW	20530
Smith	Tasha	American Association of University Professors 1133 19th Street, NW, Suite 200	20036

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Smith, Jr.	Leonard A.	Wachovia Bank, NA 444 North Capitol Street, NW	20001
Taylor, Sr.	Martin L.	Capitol City Associates, Inc. 2307 Skyland Place, SE, Suite A	20020
Toye	Joyce N.	CPS Human Resource Services 444 North Capitol Street, NW, Suite 544	20001
Tucker	Barbara A.	Finnegan Henderson Farabow Garrett & Dunner LLP 901 New York Avenue, NW	20001
Valderrama	Maria	Pesante & Mackin, LLP 1328 H Street, NE	20002
Van Dyk	Elisabeth A.	Patton Boggs LLP 2550 M Street, NW	20037
Wade	Bobby L.	Self 5617 Eads Street, NE	20019
Williams	Lorraine A.	Cadwalader Wickersham & Taft 700 6th Street, NW	20001
Xaisanasy-Baylon	Kimi	Council on Foreign Relations 1777 F Street, NW	20006
Yanes	Vilma	Nubian Tax Express 1313 Pennsylvania Avenue, SE	20003
Yonki	Andrew	Same Day Process Service 1322 Maryland Avenue, NE	20002
Ziegle	Ernst-Friedrich	Keener Management/Hamilton House 1255 New Hampshire Avenue, NW	20036

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

**City Build Incentive Grant**

**RFA RELEASE DATE: August 28, 2009**

The Office of Public Charter School Financing and Support (OPCSFS), within the Office of the State Superintendent of Education (OSSE), is soliciting grant applications for the City Build Incentive Grant. Through this RFA, the OPCSFS is soliciting applications from District of Columbia public charter schools (PCSs) and District of Columbia-based non-profit organizations representing or partnering with a high quality public charter school.

**Eligibility**

An organization/entity meeting one of the following criteria is eligible to apply for City Build grant funds under this Request for Applications:

- A public charter school board of trustees, holding a valid District of Columbia charter, with enrolled District of Columbia students; or
- A District of Columbia-based non-profit entity representing a public charter school and benefiting that school (please provide documentation of this relationship);
- Partnerships including a public charter school or District of Columbia based non-profit entities which are collaboratively undertaking a project eligible for City Build funds may apply.

Applicants must be in good standing and be qualified to do business in the District of Columbia.

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

Please visit [www.osse.dc.gov](http://www.osse.dc.gov) or contact Marie Hutchins to receive a copy of the RFA.

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

**Application No. 17799 of Chy H. Yang**, pursuant to 11 DCMR § 3104.1, for a special exception under § 223 in order to construct a rear addition to an existing one-family row dwelling which does not comply with § 406, in the R-4 District at premises 1121 Lamont Street, N.W. (Square 2842, Lot 64).<sup>1</sup>

**HEARING DATE:** September 16, 2008  
**DECISION DATES:** January 13, 2009, April 7, 2009

**DECISION AND ORDER**

This application was filed with the Board of Zoning Adjustment (“BZA” or “Board”) on March 12, 2008, by Chy H. Yang (“Applicant”), an owner of the property that is the subject of the application (“subject property”).<sup>2</sup> The Applicant filed this application in order to obtain permission to retain an-already-constructed rear addition to his residence. The application was filed requesting two variances at the direction of the Zoning Administrator, but was later amended to instead request a special exception pursuant to 11 DCMR § 223.

The Board held a hearing on the application on September 16, 2008, but kept the record open pending receipt of certain further requested information, and scheduled a decision for January 13, 2009. On January 13, 2009, the Board still felt in need of more specific plans, and after requesting these from the Applicant, postponed the decision to April 7, 2009. At its public meeting on April 7<sup>th</sup>, the Board decided to grant the application by a vote of 3-0-2.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated March 14, 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, Advisory Neighborhood Commission (“ANC”) 1A, the ANC within which the subject property is located, Single Member District 1A06, and the Councilmember for Ward 1. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the D.C. Register and on June 9, 2008, mailed such notice to the Applicant, ANC 1A, and all owners of property within 200 feet of the subject property.

Request for Party Status. ANC 1A was automatically a party to this application. The immediate neighbor, Mr. Charles Greene, whose dwelling, at 1119 Lamont Street, shares a party wall with

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<sup>1</sup>The caption has been changed from that advertised to reflect the relief finally requested.

<sup>2</sup>Mr. Rajat Vajpeyi is a co-owner of the subject property and testified at the hearing in favor of the application, but is not named on the application.

**BZA APPLICATION NO. 17799****PAGE NO. 2**

the subject dwelling, applied for, and was granted, party status. Mr. Greene had been attempting to have the Applicant's addition removed for some time before this application came before the Board, and was particularly concerned about the addition's pitched roof, which he indicated had directed heavy rains onto his back deck and into his basement well, causing basement flooding.

Applicant's Case. The Applicant and the co-owner of the subject property testified about the addition and its history, as well as about the need for zoning relief. They explained that they never had an opportunity to make a complete presentation to ANC 1A, but that they had been working closely with the neighbor at 1119 Lamont Street in order to change their design and prevent the overflow of water onto his property.

Government Reports. The Office of Planning filed a report with the Board on September 9, 2008 recommending approval of the special exception relief requested. Exhibit No. 37. OP explained the somewhat convoluted history of this addition and that its roof overhang had originally invaded the neighbor's air space by about 7 inches, but that this condition had been rectified. OP also mentioned the drainage problem cited by the neighbor, but indicated that the Applicant had installed a gutter with drain spout leading away from the dwellings to try to alleviate water problems. After addressing the provisions of § 223, OP opined that they had all been met, and therefore recommended approval of the special exception.

ANC Report. ANC 1A filed a resolution on April 3, 2009 with the Board recommending approval of the Applicant's special exception request. Exhibit No. 44. The resolution notes that the Applicant modified his design to reduce the impacts on the neighbor, Mr. Greene, and that the Applicant has paid the fines and obtained the permits necessary to allow the addition to stand. This April 3<sup>rd</sup> resolution does not include any of the information required by 11 DCMR § 3115 to enable the Board to accord it great weight<sup>3</sup>.

Persons in Support or Opposition. Council Member Graham filed a letter with the Board dated September 8, 2008 recommending denial of the variance[s] originally requested by the application. Exhibit No. 28. For almost two years before the date of this letter, the Council Member's office had been in contact with the neighbor, Mr. Greene, and with the ZA, as well as with other individuals at the Department of Consumer and Regulatory Affairs ("DCRA")

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<sup>3</sup>ANC 1A had filed a report with the Board on September 9, 2008, consisting of a cover letter and the first ANC resolution concerning this application. The cover letter states that at a properly-noticed meeting with a quorum present, the ANC voted 5-2-2 to recommend denial of the then-requested variance[s]. The resolution partially sets forth the controversial community and zoning history of the Applicant's construction of his addition, and recommends that the Board deny the variance[s] the Applicant sought at the time. The Applicant, however, was not given an opportunity to fully address the ANC with reference to the originally-requested variance[s].

The first ANC report addresses variances when the relief ultimately requested by the Applicant and acted upon by the Board was for a special exception pursuant to § 223. Further, the second ANC resolution, recommending approval of the special exception, was later in time than the first resolution. In any event, it is the practice of this Board to address all of the issues presented to it regardless of the source. Since "great weight" only requires that the Board recognize and address all relevant issues raised by an affected ANC, this order will meet that requirement regardless of whether the formal prerequisites of "great weight" have been met.

**BZA APPLICATION NO. 17799****PAGE NO. 3**

concerning the possibly improper/illegal nature of the construction of the Applicant's addition. *See*, Attachments to Exhibit No. 28.

**FINDINGS OF FACT**The subject property and the surrounding neighborhood

1. The subject property is located at address 1121 Lamont Street, N.W. in an R-4 zone district.
2. The subject property is improved with a three-story row dwelling located in the middle of the 1100 block of Lamont Street.
3. The front portion of the subject row dwelling shares a party wall with the adjacent row dwellings on either side.
4. The rear portion of the subject row dwelling is set back from the eastern side lot line approximately four feet, creating a court with a width of four feet.
5. The addition occupies a space that had been an open court. The addition extends from the rear of the dwelling toward the rear lot line. It also wraps around the corner and extends the footprint of the dwelling to the side lot line for a length of approximately eight feet into the formerly open court, making it a closed court.
6. The adjacent row dwelling to the east, at 1119 Lamont Street, also has an open court of approximately four feet in width facing the subject row dwelling, leaving an open space of approximately eight feet in width between the middle portions of the two dwellings.
7. The rear of the subject row dwelling is accessed from a paved 15-foot wide public alley.
8. The neighborhood surrounding the subject property is characterized by row dwellings, some of which have rear additions similar to the Applicant's.

The Applicant's addition and its history

9. The subject property is a fairly standard rectangle with a total square footage of approximately 2,114 square feet.
10. Before the addition that is the subject of this application, the subject row dwelling was approximately 65 feet long and 16.7 feet wide, narrowing to 12 feet, 6 inches wide with the court.
11. The subject addition fills in the 4 foot-wide court for a length of approximately 8 feet and extends the length of the dwelling to the rear by approximately 2 feet, 5 inches.

**BZA APPLICATION NO. 17799****PAGE NO. 4**

12. With the addition, the lot occupancy of the subject dwelling is 52%.
13. In the summer of 2004, the Applicant began building the subject addition.
14. On September 10, 2004, DCRA issued to the Applicant Building Permit No. B466430 allowing him to:

Extend back patio (patio currently enclosed). Add on window. Extend area approx. 47.26 sq. ft. No soil disturbance/excavation work. No mechanical/plumbing construction. (Exhibit No. 45, Attachment #5.)
15. On September 20, 2004, DCRA issued a Stop Work Order (“SWO”), citing a violation of the Building Code, 12 DCMR § 107.2.1 (1999). Exhibit No. 24.
16. On May 24, 2005, another SWO was issued, citing “illegal construction at rear of building” and stating that the building was “not in compliance with Zoning Regulations.” The SWO refers to the “courtyard,” but the rest of the sentence is illegible in the record. Exhibit No. 24.<sup>4</sup>
17. Apparently, although not included in the record, the Zoning Administrator (“ZA”) sent a letter to the Applicant dated October 16, 2006, informing the Applicant that his rear addition was not in conformance with approved plans and that it created illegal open and closed courts requiring a variance from the BZA.
18. The Applicant filed an application with DCRA dated June 6, 2007, stating that the application was:

to obtain a variance (BZA) for permit # B466430. Original permit was for addition to back of house. Extension is to left side of the house. Extension will be one level. Current issue is the enclosed inner courtyard, thus I’m seeking a BZA variance. (Exhibit No. 9.)<sup>5</sup>
19. By letter dated June 7, 2007, the Applicant informed the ZA that he was seeking a BZA variance for the non-complying open and closed courts. Exhibit No. 3.
20. Based on the Applicant’s representations that he would seek a variance from the Board, DCRA suspended its enforcement efforts.

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<sup>4</sup>The Applicant contended at the hearing that the construction was in accordance with the approved plans, but that DCRA had erroneously approved plans which violated the Zoning Regulations. Hearing Transcript (January 13, 2009) at 282-283.

<sup>5</sup>It is unclear why the Applicant filed “seeking a BZA variance” with DCRA instead of with the Board or the Office of Zoning.

**BZA APPLICATION NO. 17799****PAGE NO. 5**

21. By March 5, 2008, however, no variance application had been filed, nor had the Applicant taken any other corrective measures, therefore by letter of the same date, DCRA informed the Applicant that it was “no longer willing to suspend enforcement efforts and intends to move forward with corrective actions.” Exhibit No. 23.
22. On March 12, 2008, the Applicant filed this application with the Board requesting variance relief from 11 DCMR § 406.<sup>6</sup>
23. Although a variance would normally be required in these circumstances, § 223 of the Zoning Regulations authorizes the Board to grant special exceptions to permit additions to one- or two-family dwelling that do not comply with § 406 (and other listed sections), provided certain conditions are met.
24. On April 18, 2008, the Applicant requested to amend his BZA application from a variance request to a request for a special exception pursuant to § 223.

The need for relief

25. The Applicant’s wraparound addition created a new closed court along the side of the dwelling and a new open court above it.
26. The width of the open court is approximately four feet, whereas, per 11 DCMR 406.1, based on the height of the addition, its required width is 8.3 feet, hence the need for zoning relief.
27. The width of the closed court is approximately four feet, whereas, per 11 DCMR § 406.1, based on the height of the addition, its required width is 8.3 feet, hence the need for zoning relief.
28. The area of the closed court will be approximately 66 square feet where a minimum of 350 square feet is required per 11 DCMR § 406, necessitating zoning relief.

The special exception relief

29. The addition is only one floor and is small, with a total area of approximately 51.7 square feet.
30. The portion of the addition that runs along the side of the Applicant’s dwelling is four feet from the closest wall of the neighbor’s dwelling and for most of the length of the Applicant’s dwelling, there is an open area of eight feet between the two dwellings.

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<sup>6</sup>At some point between the beginning of construction and the Board proceedings, it was discovered that the roof overhang of the Applicant’s addition invaded the neighbor’s air space at 1119 Lamont Street by approximately seven inches. This issue was acknowledged by the Applicant and apparently rectified by removing the overhang, and was not before the Board.

**BZA APPLICATION NO. 17799****PAGE NO. 6**

31. Even with the addition, the rear yard behind the Applicant's dwelling is approximately 25 feet in length.
32. There is no window on the wall of the addition facing the adjacent neighbor's dwelling at 1119 Lamont Street.
33. The addition cannot be seen from the street, but can be seen from the alley.
34. The style of the addition matches the character of other rear additions that have been added to the row dwellings along Lamont Street.
35. The pitched roof and roof overhang which were directing water flow onto the back porch of the adjacent dwelling at 1119 Lamont Street have been removed and replaced with a flat roof with no overhang.
36. The flat roof has been fitted, along its perimeter, with both a 6 inch by 10 inch wall and an aluminum gutter leading to an aluminum downspout, relocated away from the adjacent dwelling at 1119 Lamont Street.
37. The downspout drains water to the rear alley through a plastic hose.

**CONCLUSIONS OF LAW**

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of § 3104, the Applicant also had to meet the requirements of § 223.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to determining whether the proposed exception satisfies the ... requirements" of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305A.2d 516, 518 (D.C. 1973)). Therefore, notwithstanding the somewhat confused history of the construction of the Applicant's addition, if it now meets the special exception requirements, special exception relief must be granted.

The proposed development meets all the requirements of §§ 3104 and 223. The Applicant's addition is to a one-family dwelling. In its final iteration, the addition does not have a substantially adverse effect on the use or enjoyment of adjacent properties. The addition is quite

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modest, only one story tall, and will have little effect on the light and air available to neighboring properties. With no window on the side wall facing the closest neighbor, there is no effect on the neighbor's privacy. The addition is not visible from the street and does not in any way change the character of the street frontage or the neighborhood.

The addition's original pitched, overhanging roof impacted the neighbor at 1119 Lamont Street, but that situation has been rectified with a new flat roof design fitted with a 6 inch by 10 inch perimeter wall to prevent spillage of water off the roof. The roof is also fitted with appropriate gutters and downspouts directing water away from 1119 Lamont Street. In a letter dated March 17, 2009, the neighbor at 1119 Lamont, who had been granted party status, characterized the new flat-roofed plans (Exhibit No. 43) "as a solution to the water issue." Exhibit No. 45.

The R-4 district was established for areas "developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) or more families," 11 DCMR § 330.1. The principal purpose of the R-4 District is "the stabilization of remaining one-family dwellings," 11 DCMR § 330.2. The special exception relief here is in harmony with this purpose as it enhances the use of a one-family row dwelling in an R-4 district.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of 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. As explained above, there is no ANC report to which the Board can properly give great weight; however, this order has nonetheless addressed the relevant issues and concerns raised by the affected ANC. The Office of Planning recommended granting the special exception relief herein, and the Board agrees.

For all the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application for a special exception pursuant to §§ 3104 and 223. Accordingly, it is hereby **ORDERED** that this application (pursuant to Exhibit No. 43, plans) be **GRANTED**.

**VOTE:**           **3-0-2** (Marc D. Loud, Shane L. Dettman, and Mary Oates Walker to 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 25, 2009**

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

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

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

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

LM

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

**Application No. 17898 of District-Properties.com, LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the lot width and lot area requirements under § 401 and a variance from the side yard requirements under § 405 to construct a new one-family detached dwelling in the R-2 district at premises 311 56<sup>th</sup> Street, N.E. (Square 5264, Lot 15).

**HEARING DATES:** March 24, 2009 and April 7, 2009

**DECISION DATE:** May 19, 2009

**DECISION AND ORDER**

This self-certified application was submitted October 17, 2008 by District-Properties.com, LLC, the owner of the property that is the subject of the application (“Applicant”). Following a public hearing, the Board voted 3-0-2 on May 19, 2009 to grant the application.

**PRELIMINARY MATTERS**

Application. The application was filed pursuant to 11 DCMR § 3103.2 for area variances from the lot width and lot area requirements under § 401 and from the side yard requirements under § 405 to allow construction of a new one-family detached dwelling in the R-2 district at Square 5264, Lot 15.

Notice of Application and Notice of Public Hearing. By memoranda dated October 17, 2008, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 7; Advisory Neighborhood Commission (“ANC”) 7C, the ANC for the area within which the subject property is located; and the single-member district ANC 7C05.

A public hearing was scheduled for March 24, 2009. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on January 9, 2009 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 7C. Notice was published in the D.C. Register on January 9, 2009 (56 DCR 264). The hearing was continued to and completed on April 7, 2009.

Requests for Party Status. In addition to the Applicant, ANC 7C was automatically a party in this proceeding. There were no additional requests for party status.

Applicant’s Case. The Applicant, represented by Mohammad Sikder, requested variance relief from the minimum lot area, lot width, and side yard requirements to allow construction of a three-story, one-family detached dwelling on a nonconforming lot. The Applicant testified that he had sent letters by certified mail to the owners of each of the adjoining lots but had not

**BZA APPLICATION NO. 17898****PAGE NO. 2**

received any response. The Applicant also attended a meeting of ANC 7C and the Northeast Boundary Civic Association to present his plans for the property.

Government Reports. By report dated March 17, 2009 and through testimony at the public hearing, the Office of Planning recommended approval of the application.

ANC Report. By letter dated March 13, 2009, ANC 7C indicated that the ANC had considered the application at a public meeting held March 12, 2009 with a quorum present. ANC 7C requested a continuance so that the ANC could have additional “time to obtain information from the developer regarding the impact the development and this variance request” would have in the community.

By letter dated May 12, 2009, ANC 7C indicated that, at the conclusion of a public meeting held April 9, 2009 with a quorum present, the ANC unanimously voted to recommend denial of the application. According to the ANC, the Applicant had been unable to address concerns raised by neighbors of the subject property that (i) the amount of relief needed to build the proposed house was too large, (ii) the Applicant had not contacted the owner of the adjacent lot regarding use of the lot, (iii) the design of the Applicant’s proposed house would not “fit with the design and look of the current homes on 58<sup>th</sup> Street, N.E., and (iv) the Applicant had not requested “the opinion and input of the residents on the design” of the proposed house.

Persons in opposition. The Board heard testimony and received a letter from persons in opposition to the application, who stated that the height of the Applicant’s proposed dwelling was excessive and would be out of character with existing houses in the neighborhood, or who opposed construction on the subject property in favor of maintaining the “present number of homes.”

**FINDINGS OF FACT****The Subject Property and Surrounding Area**

1. The subject property is a rectangular lot located on the east side of 58<sup>th</sup> Street, N.E. (Square 5264, Lot 15). The lot is presently unimproved. A public alley 20 feet wide abuts the property at the rear.
2. The subject property is approximately 25 feet wide and 140 feet deep, and has a lot area of 3,500 square feet. The property is nonconforming with respect to lot area and lot width, as the R-2 district requires a minimum lot area of 4,000 square feet and a minimum lot width of 40 feet for a one-family dwelling. *See* 11 DCMR § 401.3.
3. Properties adjacent to the subject property are under separate ownership. The parcel to the north is developed with a one-family detached dwelling. The parcel to the south is a large vacant lot, approximately 6,800 square feet in area. The Applicant sent a certified

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letter to the owner of that parcel, seeking to buy part or all of the property, but did not receive a response.

4. Most properties in the vicinity of the subject property are improved with one-family detached or semi-detached dwellings or row dwellings. The square also contains an apartment building and some vacant lots. Generally, the area surrounding the subject property is characterized by low-density residential dwellings.

**The Applicant's Project**

5. The Applicant proposes to construct a new three-story, one-family detached dwelling on the subject property. The three-bedroom house will be 19 feet wide and 40 feet long, and will be set back approximately 20 feet from the front property line.
6. The Applicant will provide three foot side yards on each side of the house, as well as a rear yard of approximately 95 feet. The R-2 district requires side yards at least eight feet wide and a rear yard at least 20 feet deep. *See* 11 DCMR §§ 405.9, 404.1.
7. The house will be a distance of approximately eight to 10 feet from the residence located on the abutting property to the north. The property abutting to the south is presently undeveloped.
8. The Applicant will install brick and metal fences, 42 inches high, along the side property lines and in front of the house, and a stockade fence, six feet high, around the rear yard.
9. A parking pad, 20 feet by 16 feet, will be provided in the rear yard, accessible from the alley. The Applicant will install a garage door, eight feet high, at the entrance to the parking pad. A walkway, three feet wide, will connect parking pad and the house.
10. The front of the house will be clad in brick veneer, while the sides and back will have HardiPlank siding.

**Zone Plan**

11. The subject property is located in the R-2 district, which “consists of those areas that have been developed with one-family, semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. It shall be expected that these areas will continue to contain some small one-family detached dwellings.” 11 DCMR § 300.1.
12. The proposed three-story house will have a building height of 35 feet. The R-2 district allows a maximum height of 40 feet and three stories. 11 DCMR § 400.1.

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13. Lot occupancy after construction of the house will be approximately 21.7 percent. The R-2 district permits a lot occupancy of 40 percent for a one-family dwelling. 11 DCMR § 403.2.

**CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks area variances from the lot width and lot area requirements under § 401 and from the side yard requirements under § 405 to construct a new one-family detached dwelling in the R-2 district at 311 56<sup>th</sup> Street, N.E. (Square 5264, Lot 15).

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 Board concurs with the Applicant and the Office of Planning that the subject property faces an exceptional situation or condition as a lot that was established in its current size and shape prior to the original adoption of the Zoning Regulations. The lot was created as a relatively small, narrow parcel that lacks the width and area now required under the Zoning Regulations, such that the now-applicable area requirements cannot be satisfied on the subject property. The strict application of the Zoning Regulations to the subject property would result in practical difficulty to the owner, because development consistent with the R-2 designation of the property could not occur on the lot without variance relief. The subject property cannot be enlarged to a conforming size through the acquisition of adjoining property, as one abutting property is already improved and the owner of the other, unimproved parcel is apparently not interested in selling any part of that lot.

The Board also concurs with the Applicant and OP that the requested variances 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. The Applicant’s project will provide infill development of a new one-family detached dwelling, with parking, in a location designated for relatively low-density residential development. The new house will not impair the light and air available to any nearby residences, as the Applicant’s dwelling will be located eight to 10 feet from the only abutting residence.

The Board is required to give “great weight” to any issues and concerns raised by ANC 7C in this proceeding. The Board credits the unique vantage point that ANC 7C holds with respect to the impact of the requested zoning relief on the ANC’s constituents. However, the Board

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concludes that the ANC did not offer persuasive evidence that would cause the Board to find that the requested zoning relief should not be approved. ANC 7C recommended denial of the application on the grounds that the Applicant had not addressed certain concerns raised by neighbors relating to the degree of relief requested, the Applicant's failure to contact the owner of the adjacent lot, and the design of the Applicant's proposed house, especially the Applicant's failure to obtain input from neighboring residents on the design.

There is no legal requirement for applicants to confer with adjacent property owners or respond to their neighbors' concerns outside of the record before the Board. While the Board encourages such behavior, it cannot deny an application on this basis. An applicant for a variance must convince the Board that the relief is needed and will not cause substantial detriment to the public good nor impair the intent, purpose, and integrity of the zone plan. After taking into account the concerns expressed in the record, the Board has concluded that the Applicant has met its burden.

With regard to design issues, the Board notes that the proposed house will comply with all area requirements applicable in the R-2 district with the exception of the side yards, and concurs with OP that the planned one-family detached dwelling will be consistent with the character of the surrounding residential neighborhood and with the low-density residential intent of the R-2 district.

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 7C, the Board concludes that the Applicant has satisfied the requirements for area variances from the lot width and lot area requirements under § 401 and from the side yard requirements under § 405 to allow construction of a new one-family detached dwelling in the R-2 district at 311 56<sup>th</sup> Street, N.E. (Square 5264, Lot 15). Accordingly, it is hereby **ORDERED** that this application (pursuant to Exhibit No. 25, revised plans) is **GRANTED**.

**VOTE: 3-0-2** (Marc D. Loud, Shane L. Dettman, and Michael G. Turnbull voting to approve; two Mayoral appointees (vacant) not participating, not voting.)

**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: AUGUST 25, 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.

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

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

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

MN

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 05-17C/05-32C**

**Z.C. Case No. 05-17C/05-32C**

**(Two-Year PUD Time Extension @ Square 2873, Lot 799 & Square 2875, Lots 1109, 1110)  
Broadway Atlantic One LLC, Broadway Atlantic Two LLC, and  
Broadway Atlantic Four LLC  
July 27, 2009**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 27, 2009. At the meeting, the Commission approved the request of Broadway Atlantic One LLC, Broadway Atlantic Two LLC, and Broadway Atlantic Four LLC (the "Applicant") for a time extension of the Consolidated Review and Approval of a Planned Unit Development ("PUD") for Square 2873, Lot 799 and Square 2875, Lots 1109 and 1110; the property being located in the vicinity of the intersection of 9<sup>th</sup> and V Streets, NW (the "Property"). The request was made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District Municipal Regulations ("DCMR"). The Commission determined that this request was properly before it under the provisions of § 2408.10 of the Zoning Regulations.

**FINDINGS OF FACT**

1. By Z.C. Order No. 05-17/05-32, effective June 2, 2006, the Commission approved a PUD for the Property. The approved PUD provided for the development of a mixed-use project consisting of 630-700 residential units and approximately 14,800 square feet of retail space. The Commission conditioned approval upon the provision of a minimum of 29,800 square feet of affordable housing for households with an annual income of at least 80% of the area median income.
2. Z.C. Order No. 05-17/05-32 was corrected by Z.C. Corrected Order No. 05-17B/05-32B, which became effective May 18, 2007. Z.C. Order No. 05-17B/05-32B corrected a typographical error regarding the location of the affordable housing. All other terms of the order remained unchanged.
3. Z.C. Case No. 05-17/05-32 was modified subsequently by Z.C. Order No. 05-17A/05-32A. The Commission modified the initial approval of the PUD to allow an increase in the total number of residential units up to a maximum of 724 and to increase the retail space to approximately 34,550 square feet of space (while retaining flexibility to reduce the amount of retail space by approximately 20,000 square feet). The Commission approved the removal of a parcel of land from the PUD as well as a reduction in the parking ratio. Z.C. Order No. 05-17A/05-32A otherwise incorporated the terms approved in Z.C. Case No. 05-17/05-32.
4. Z.C. Order No. 05-17A/05-32A became effective on June 15, 2007. On June 12, 2009, prior to the expiration of the PUD, the property owner filed a request to extend the validity

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of the PUD approval for a period of two years. The request stated, in relevant part, that the extension was necessary because of the dire economic conditions in the real estate market that were outside of the Applicant's control. The Applicant attempted to secure financing for the project on more than one occasion but was unsuccessful due to the frozen credit market. The Applicant further noted that there had been no substantial change of material facts since the Commission's approval of the modification application in 2007.

5. Advisory Neighborhood Commission ("ANC") 1B, the ANC within which the Property is located, was automatically a party in the instant case, as well as the original and subsequent PUD cases. Accordingly, the Applicant served the ANC a copy of the extension request and provided at 30 days for them to respond. No responses were received.
6. At its regularly scheduled public meeting on July 27, 2009, the Commission reviewed and approved the two-year time extension. The Commission found that there was good cause for the extension and that all parties to the PUD case had been served.

### CONCLUSIONS OF LAW

The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties and all parties are allowed 30 days to respond; (b) there is no substantial change in any material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) substantial evidence that there is good cause for the extension based on the criteria established in § 2408.11. (11 DCMR § 2408.10.) The three criteria under § 2408.11 are: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the Applicant's control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD Order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order. (11 DCMR § 2408.11.)

The Commission concludes the Applicant complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.

The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.

The Commission concludes the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a).

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

The approval of the time extension is not inconsistent with the Comprehensive Plan.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of Z.C. Case No. 05-17C/05-32C for a two-year time extension of the PUD approval in Z.C. Order No. 05-17/05-32, as corrected by Z.C. Order No. 05-17B/05-32B and modified by Z.C. Order No. 05-17A/05-32A.

The final PUD approved by the Commission shall be valid until June 15, 2011, within which time an application shall be filed for a building permit, as specified in § 2409.1. Construction shall start no later than June 15, 2012.

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 identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

For the reasons stated above, the Commission concludes that the Applicant has met its burden; it is hereby **ORDERED** that the application be **GRANTED**.

On July 27, 2009, upon a motion made by Chairman Hood, as seconded by Vice Chairman Keating, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull, Peter G. May to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *DC Register* on August 28, 2009.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 06-29A**

**Z.C. Case No. 06-29A**

**(Washington Value Add I LLC – Two-Year PUD Time Extension @ Square 72, Lot 74)  
July 27, 2009**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 27, 2009. At the meeting, the Commission approved a request from Washington Value Add I LLC (the "Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Lot 74 in Square 72 (the "Subject Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District Municipal Regulations ("DCMR").

**FINDINGS OF FACT**

1. By Z.C. Order No. 06-29, the Commission approved a PUD for the Subject Property and an application to amend the Zoning Map from the R-5-E Zone District to the CR Zone District for the Subject Property. The Subject Property consists of approximately 31,244 square feet of land area. The approved PUD includes plans to renovate and reconfigure the existing hotel and to extend the height of the building from 90 feet to 110 feet with a two-story addition. This expansion will increase the gross floor area to contain approximately 217,684 square feet and will have a density of 6.97 FAR.
2. The order became effective on July 13, 2007, and pursuant to 11 DCMR § 2408.8, will expire on July 13, 2009 unless an application is filed for a building permit.
3. By letter dated and received by the Commission on June 9, 2009, the Applicant filed a request to extend the validity of the PUD approval for a period of two years, such that an application must be filed for a building permit for the PUD no later than July 12, 2011 and construction must start no later than July 12, 2012. The letter indicates that the project has experienced delay beyond the Applicant's control, specifically the evaporation of construction finance in the hospitality industry and the ongoing global economic recession, since the approval by the Commission. As the Commission has found in a number of recent cases, the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales and other impediments.
4. The Applicant indicated in its letter that it has worked diligently to secure financing for the project, and has retained the hotel management company Capital Hotel Management LLC to extract the necessary capital from the property through the careful management of the hotel assets and the evaluation of refinancing/financing options available to construct this addition. To date, the Applicant indicated that it has been faced with impediments directly relating to the economic recession specifically: (1) the virtually non-existent financing in the hospitality industry; (2) the nature of the hotels in their inability to pre-lease to obtain loans; (3) the overall depression of the hotel hospitality industry that is not expected to recover until the first quarter of 2011.

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5. The only other parties to this application are Advisory Neighborhood Commission ("ANC") 2A, the West End Citizens Association ("WECA") and the Foggy Bottom Association ("FBA"). The Applicant served a copy of its request on the parties. The representative from ANC 2A02 submitted a letter advising the Commission that the ANC lacked a quorum at its July 15, 2009, meeting and could not take an official position on the extension request. It was noted, however, that the two members present did support the application. WECA and FBA did not file responses to the record.

### CONCLUSIONS OF LAW

Pursuant to § 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request made before the expiration of the approval. Section 2408.11 provides that an extension of the validity of a PUD may be granted by the Commission for good cause shown if an applicant has demonstrated with substantial evidence one or more of the following criteria: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

The Commission concludes the Application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the Application and allowing them 30 days to respond.

The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.

The Commission concludes the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a), the Applicant's inability to obtain sufficient project financing for the PUD, following its diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond its control.

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

The approval of the time extension is not inconsistent with the Comprehensive Plan.

Section 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11. No party has generated such a factual issue.

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### DECISION

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby Orders that the validity of Z.C. Order No. 06-29 be extended for a period of two years, such that an application must be filed for a building permit for the PUD no later than July 12, 2011 and construction must start no later than June 12, 2012.

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 identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On July 27, 2009, upon the motion of Chairman Hood, as seconded by Vice Chairman Keating, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad S. Schlater, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 28, 2009.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 06-31B**

**Z.C. Case No. 06-31B**

**(Two-Year Time Extension for PUD at 5220 Wisconsin Avenue, N.W.)**

**John Akridge Development Company – Square 1657, Lots 810, 811, and 812  
July 27, 2009**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 27, 2009. At the meeting, the Commission approved a request from the John Akridge Development Company (the "Applicant") for a time extension for an approved consolidated planned unit development ("PUD") and related map amendment for property consisting of Lots 810, 811, and 812 in Square 1657 (the "Property"), pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

**FINDINGS OF FACT**

1. By Zoning Commission Order No. 06-31 ("Order No. 06-31"), the Commission approved a consolidated PUD and related zoning map amendment from the R-5-B Zone District to the C-2-B Zone District for the Property. The approved PUD authorized construction of a residential building with ground floor retail, having a maximum density of 5.25 FAR and containing between 60 and 70 residential units. The project will have a maximum height of 79 feet, with step downs in height on the Wisconsin Avenue frontage and at the rear as shown on the approved plans. The project will provide 1.2 parking spaces per residential unit plus 15 retail parking spaces, three residential visitor spaces and two car-sharing spaces, all in a below-ground parking garage. The project includes streetscape improvements and a variety of public benefits and project amenities. Order No. 06-31 became effective upon its publication in the *D.C. Register* ("DCR") on October 26, 2007.
2. By Zoning Commission Order No. 06-31A ("Order No. 06-31A"), the Commission approved modifications to Order No. 06-31, clarifying the commitments made by the Applicant, upon motion for reconsideration filed by Advisory Neighborhood Commission 3E ("ANC 3E"). Order No. 06-31A became effective upon its publication in the *D.C. Register* on January 4, 2008.
3. On November 21, 2007, Friendship Neighborhood Association ("FNA"), a party to the original PUD application, filed a petition for review requesting the D.C. Court of Appeals to review and set aside Order No. 06-31. On February 5, 2008, FNA filed a petition for review requesting the D.C. Court of Appeals to review and set aside Order No. 06-31A. The Applicant intervened in both of these cases, and the Court of Appeals consolidated the cases. FNA, along with the other parties to the court case, filed a Consent Motion to Dismiss Petitions for Review on May 28, 2008. By order dated June 2, 2008, the D.C. Court of Appeals dismissed the petitions for review.
4. Section 2408.13 of the Zoning Regulations states that in the event an appeal is filed, the time limitations of §§ 2408.8 and 2408.9 shall run from the decision date of the court's

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final determination of the appeal. Based on the dismissal date of the appeal of June 2, 2008, the Applicant must file for a building permit by June 2, 2010, and begin construction by June 2, 2011.

5. By letter dated and received by the Commission on June 19, 2009, the Applicant filed a request to extend the validity of the PUD approval for a period of two years. The request, if approved, would require that an application for a building permit must be filed no later than June 2, 2012, and construction must be started no later than June 2, 2013. The Applicant's request was supported by an affidavit from the Applicant's project manager setting forth details of the Applicant's inability to obtain project financing at this time, as discussed in Finding Nos. 6 and 7.
6. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. While the Applicant's intent was to move forward with the project as quickly as possible after approval, the Applicant was unable to do so due to the pending legal appeals. Just a few months after the appeals were dismissed, the real estate market suffered a major crisis. Banks froze lending for residential projects or ceased lending operations entirely due to the uncertainty in market conditions and the softening of the housing market.
7. Despite these events, as indicated by the evidence in the record, the Applicant worked diligently to secure financing for the project. The Applicant held numerous discussions with providers of equity and debt and found that lending institutions were reluctant to consider financing a condominium project, no matter the location, size, or level of competition. The Applicant found that the difficulties in the credit markets were further aggravated by the oversupply of new residential units at a time where demand had significantly decreased. Furthermore, while the Applicant reported some decreases in estimated construction costs, those decreases were not sufficient to establish acceptable financial pro formas nor did those cost decreases persuade financial institutions to lend money for residential projects. Accordingly, the Applicant was unable to obtain sufficient project financing to move this project forward on its original timetable, following its diligent, good faith efforts, because of changes in the economic and market conditions, which are beyond the Applicant's control.
8. The Applicant served a copy of the request on all parties (including ANC 3E, FNA, and Ward 3 Vision) on June 19, 2009. By letter filed on July 10, 2009, Ward 3 Vision indicated its support of the requested extension. FNA did not submit a response.
9. On July 17, 2009, ANC 3E submitted a resolution requesting that the Commission deny the extension application. ANC 3E requested that the Applicant work with the ANC to develop a process to insure that certain financial benefits approved as part of the PUD are tailored to address the highest priority needs of the public schools in the area, senior services, and enhancing the atmosphere in the corridor at the time of delivery and to insure that the real

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value (i.e., as compared to the nominal value) of those benefits is not eroded by the time extension. ANC 3E's opposition was not based on any evidence or argument that the Applicant failed to show good cause for the requested extension as provided for in § 2408.11.

10. On July 21, 2009, the Applicant responded to ANC 3E's resolution stating that the amenities and benefits package had been approved by the Commission in Order No. 06-31, that the amenities which were the focus of the ANC's concern were only a portion of that overall package, that the extension process was not intended to be an opportunity to rehear a previously approved PUD, and that there was no change in a material fact that would call into question the original approval.
11. The Commission finds that that there has not been a substantial change in the material facts since the original approval of the PUD and finds that the essential elements of the PUD have not changed. Specifically, the possible changes related to the approved amenities and benefits noted by ANC 3E in its resolution do not constitute substantial changes in material facts. In addition, the Commission finds that it is not required under the extension standard to re-evaluate the relative value of the amenities and benefits originally approved in the PUD. Furthermore, the Commission finds that if changes are required because some portion of the approved amenities and benefits cannot be executed or accomplished, such changes will be reviewed through a separate process initiated by the Applicant, not as part of an extension application. It is undisputed that the current economic climate caused by conditions beyond the Applicant's control is preventing the Applicant from obtaining needed project financing. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11(a) of the Zoning Regulations, the Commission finds that the request for the two-year time extension should be granted.

### CONCLUSIONS OF LAW

1. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11. (11 DCMR § 2408.10.) Section 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other

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condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

2. The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
3. The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD. The Commission concludes that the changes noted by ANC 3E do not rise to the level of substantial changes in material facts.
4. The Commission is required under D.C. Code § 1-309.10(d) (2001) to give great weight to the affected ANC's recommendations. The Commission has carefully considered ANC 3E's recommendations and has responded to or addressed each of its issues and concerns and stated why it did not find the ANC's advice persuasive.
5. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.
6. Section 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11.
7. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.
8. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

### DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the application for a two-year time extension of the PUD approved in Zoning Commission Case No. 06-31.

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1. The final PUD approved by the Commission shall be valid until June 2, 2012, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than June 2, 2013.
2. 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 identity or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicants to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On July 27, 2009, upon the motion made by Chairman Hood, as seconded by Vice Chairman Keating, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad S. Schlater, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR §3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 28, 2009.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 06-43A**  
**Z.C. Case No. 06-43A**  
**(American University – Extension of the Validity of Z.C. Order No. 06-43)**  
**July 27, 2009**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the “Commission”) was held on July 27, 2009. At the meeting, the Commission approved a request from American University (“AU” or “Applicant”), pursuant to § 3130.6, for an extension of the validity of Z.C. Order No. 06-43 (the “Subject Order”), by granting a two-year extension of the time period set forth in § 3130.1 to file plans for the renovation of and addition to the McKinley Building, on the Main Campus of American University, for the purposes of obtaining a building permit. No other extension was formally sought or granted.

**FINDINGS OF FACT**

1. By Zoning Commission Order No. 06-43, the Commission approved a special exception to renovate the McKinley Building, on AU’s Main Campus, to become home to the new School of Communications. The renovation was to include the demolition and rebuilding of a portion of the building, and includes the expansion of the building, primarily underground. The entire renovation will add approximately 3,152 square feet of new gross floor area.
2. Pursuant to 11 DCMR § 3035.5, the Commission uses the Board of Zoning Adjustment (“BZA”) rules of practice and procedure in processing, reviewing, and approving college and university uses.
3. Z. C. Order No. 06-43 became effective upon its publication in the *D.C. Register* (“DCR”) on July 20, 2007. Pursuant to 11 DCMR § 3130.1, the Commission’s approval is valid for a period of two years. If no application for a building permit or motion for time extension is filed within that timeframe, the approval expires.
4. A building permit must be issued six months after a permit application is filed, 11 DCMR § 3130.2, and construction must commence no later than six months thereafter, 11 DCMR § 3130.3.
5. Effective June 5, 2009, a new § 3130.6 was added to the Zoning Regulations. That provision authorized the BZA to, “grant one extension of the time periods in § 3130.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval,” provided that certain showings are made.
6. The BZA’s rules do not expressly authorize an extension of the time within which to start construction.
7. By letter dated and received by the Commission on June 16, 2009, pursuant to 11 DCMR § 3130.6, the Applicant filed a request to extend the validity of the Z.C. Order No. 06-43

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for a period of two years, such that an application for a building permit must be filed no later than July 20, 2011, and construction must commence no later than July 20, 2012.

8. The Applicant's extension request was made pursuant to and only addressed the requirements of 11 DCMR § 3130.6 for extending the validity of the Subject Order. (Exhibit 1.) It did not seek a waiver from the construction timing requirements of § 3130.3 or explain why such a waiver is needed.
9. As to § 3130.6, an Applicant must demonstrate good cause by offering substantial evidence of one or more of the criteria set forth in § 3130.6(c). In this instance, the Applicant asserted its, "inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control."
10. The Applicant offered substantial evidence that it has been unable to follow its financial plan for raising donations of \$20 million to pay for a major portion of the McKinley Building renovation costs. AU noted that while significant effort is being put into fundraising for the School of Communications, the state of the economy has affected gift-giving and has slowed progress such that AU has received pledges that total less than five percent of its fundraising goal. Given the turmoil in the financial markets, AU noted that it is not prudent to proceed with the project until more progress is made in fundraising. (Exhibit 1.)
11. Advisory Neighborhood Commission ("ANC") 3D submitted a letter to the Commission on July 5, 2008, indicating the ANC's vote in support of extending the approval with the caveat that the contribution of the McKinley Building expansion to increased traffic will be included in AU's 2011 Campus Plan treatment of the cumulative campus traffic increase with appropriate traffic mitigation measures. (Exhibit 4.)
12. Thomas Smith, ANC Commissioner for SMD 3D02, submitted a letter to the Commission on July 8, 2009, opposing the extension of the approval. In his letter, Mr. Smith stated that AU failed to meet the requirements in 11 DCMR § 3130.6. He claimed that the application was not delivered in a timely manner and that the community did not have sufficient time to review the request. Also, Mr. Smith stated that traffic conditions have changed since the special exception application for further processing was approved. Further, Mr. Smith stated that AU should have been able to raise the funds to commence construction on the McKinley Building project and failed to produce substantial evidence why it did not have the funds. Mr. Smith requested that the Commission delay action on the application for two to three months. (Exhibit 5.)
13. Neighbors for a Livable Community submitted a letter to the Commission on July 25, 2009 in opposition to extending the approval, stating that the McKinley Building project should be considered as part of AU's next Campus Plan cycle. (Exhibit 6.)

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### CONCLUSIONS OF LAW

Pursuant to 11 DCMR §3130.6 of the Zoning Regulations, the Commission may grant one extension of the time periods outlined in 11 DCMR § 3130.1 for good cause shown upon a request made before the expiration of the approval. As noted, the Applicant is asserting the existence of good cause based upon its, “inability to obtain sufficient project financing due to economic and market conditions beyond the applicant’s reasonable control.” (11 DCMR § 3130.6 (c).) In addition, there must be, “no substantial change in any of the material facts upon which the [Commission] based its original approval of the application that would undermine the [Commissions] justification for approving the original application.” (11 DCMR § 3130.6 (b).)

The Commission concludes that the Applicant complied with the notice requirements of 11 DCMR § 3130.6(a) by serving all parties to Case No. 06-43 (the only party was ANC 3D) with a copy of the application on June 16, 2009, and allowing them 30 days before the public meeting to respond.

The Commission concludes that there has been no substantial change in any material facts that would undermine the Commission’s justification for approving the special exception for further processing of an approved campus plan. The Applicant has not changed any aspects of the proposed McKinley Building project, and the impacts and conditions under which the special exception was considered have not appreciably changed.

The Commission concludes that the Applicant has met the burden of proof of showing substantial evidence of good cause pursuant to 11 DCMR § 3130.6 (c). Specifically, AU has demonstrated that economic and market conditions beyond its reasonable control have affected gift-giving and have slowed fundraising progress such that AU cannot proceed with the project until more progress is made in fundraising.

As to the requirement of § 3130.3 that construction must commence six months after a building permit is issued for this project, the Applicant did not seek or prove the need for a waiver of that provision and so none can be granted. The Commission assumes that the Applicant will not apply for a building permit until it has resolved the funding issues it describes, and therefore will be prepared to commence construction within six months after the permit is issued. Should unforeseen circumstances thereafter delay the start of construction, the Applicant may seek a waiver of § 3130.3.

The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to the issues and concerns expressed in the affected ANC's written recommendation through articulating with precision why it does or does not find the advice persuasive. The Commission concludes that it is not appropriate or necessary to add the condition requested by ANC 3D to this Order. A condition cannot impose a requirement on a future proceeding and, in any event, the Commission’s review of AU’s next Campus Plan must address all relevant traffic impacts.

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The ANC did not indicate whether it would support the requested extension without the condition imposed, and this Commission cannot assume either the ANC's support or opposition.

### **DECISION**

In consideration of the Findings of Fact and the Conclusions of Law herein, the Zoning Commission of the District of Columbia hereby orders **APPROVAL** of the application for a two-year extension of the time period set forth in § 3130.1 for the filing of the plans approved in Z.C. Order 06-43 for the purposes of obtaining a building permit; that is until July 20, 2011. Pursuant to § 3130.3, construction shall commence no later than six months after the permit is issued. Failure to meet either deadline will result in the expiration of the validity of the Subject Order.

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 identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic material, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On July 27, 2009, upon motion of Chairman Hood, as seconded by Vice Chairman Keating, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*, that is, on August 28, 2009.