

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

PUBLIC NOTICE

**Notice of Regular Quarterly Meeting
for December 2009**

The District of Columbia Advisory Committee to the Office of Administrative Hearings (“Committee”) hereby gives notice that the Committee will hold its next quarterly meeting on the date listed below.

The meeting will be held at the John A. Wilson Building, located at 1350 Pennsylvania Ave. N.W., Washington, DC 20004, Suite 301.

For further information, please contact Ms. LaVita Anthony, on (202) 724-7681. The date and time of the meeting of the Committee is as follows:

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

This schedule is subject to change.

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
November 3, 2009	6211 Dix Street, NE	804	5268	2-story commercial building

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

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

Certification of Filling Vacancies
In Advisory Neighborhood Commissions

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

Norman Metzger
Single-Member District 6B03

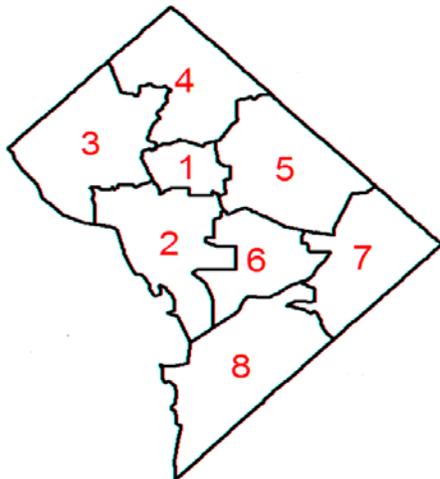
**D.C. BOARD OF ELECTIONS AND ETHICS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**

CITYWIDE SUMMARY

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

<i>WARD</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
<i>1</i>	36,366	2,637	812	9,984	199	49,998
<i>2</i>	29,177	5,495	340	9,818	163	44,993
<i>3</i>	34,451	7,742	353	10,225	148	52,919
<i>4</i>	46,593	2,718	606	8,667	180	58,764
<i>5</i>	46,192	2,029	572	7,291	167	56,251
<i>6</i>	38,981	5,206	511	8,805	168	53,671
<i>7</i>	45,607	1,498	466	6,456	125	54,152
<i>8</i>	37,567	1,360	497	6,357	128	45,909
TOTALS	314,934	28,685	4,157	67,603	1,278	416,657
<i>TOTAL Percentage (by party)</i>	75.6%	6.9%	1.0%	16.2%	0.3%	100%

Wards



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

PRECINCT STATISTICS

Ward 1

For the Period Ending: October 31, 2009

<i>PRECINCT</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
20	1,257	41	16	316	11	1,641
22	2,850	254	37	708	14	3,863
23	1,972	128	62	535	9	2,706
24	2,118	215	31	600	16	2,980
25	3,488	418	75	1,013	7	5,001
35	2,973	210	69	841	13	4,106
36	3,396	232	77	914	21	4,640
37	2,448	127	51	608	12	3,246
38	2,326	123	66	599	16	3,130
39	3,333	219	101	894	22	4,569
40	3,210	218	98	987	19	4,532
41	2,539	156	58	858	19	3,630
42	1,492	58	31	409	6	1,996
43	1,437	72	24	303	6	1,842
136	783	122	8	235	2	1,150
137	744	44	8	164	6	966
TOTALS	36,366	2,637	812	9,984	199	49,998

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

PRECINCT STATISTICS

Ward 2

For the Period Ending: October 31, 2009

<i>PRECINCT</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
2	424	121	5	252	6	808
3	1,282	401	9	562	8	2,262
4	1,310	409	9	588	7	2,323
5	2,120	721	20	795	8	3,664
6	2,502	1,170	36	1,505	21	5,234
13	1,190	265	5	416	2	1,878
14	2,606	419	32	858	10	3,925
15	2,771	292	22	801	17	3,903
16	2,757	340	32	662	13	3,804
17	3,824	556	47	1,202	38	5,667
18	3,227	198	57	701	11	4,194
21	1,347	91	26	299	6	1,769
129	1,783	304	16	647	5	2,755
141	2,034	208	24	530	11	2,807
TOTALS	29,177	5,495	340	9,818	163	44,993

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

PRECINCT STATISTICS

Ward 3

For the Period Ending: October 31, 2009

<i>PRECINCT</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
<i>7</i>	1,087	399	16	463	5	1,970
<i>8</i>	2,274	731	25	707	10	3,747
<i>9</i>	1,031	580	7	382	4	2,004
<i>10</i>	1,891	568	18	684	5	3,166
<i>11</i>	3,222	847	38	1,258	21	5,386
<i>12</i>	487	210	3	196	5	901
<i>26</i>	2,540	390	31	770	9	3,740
<i>27</i>	2,303	290	18	518	9	3,138
<i>28</i>	2,381	724	32	882	12	4,031
<i>29</i>	1,315	283	15	398	4	2,015
<i>30</i>	1,276	306	17	282	5	1,886
<i>31</i>	2,316	426	19	601	9	3,371
<i>32</i>	2,608	444	24	611	12	3,699
<i>33</i>	2,746	394	34	712	11	3,897
<i>34</i>	3,031	478	24	902	16	4,451
<i>50</i>	1,979	320	15	421	10	2,745
<i>138</i>	1,964	352	17	438	1	2,772
<i>TOTALS</i>	34,451	7,742	353	10,225	148	52,919

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

PRECINCT STATISTICS

Ward 4

For the Period Ending: October 31, 2009

<i>PRECINCT</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
45	2,121	89	40	371	12	2,633
46	2,961	110	35	531	13	3,650
47	2,621	174	42	687	17	3,541
48	2,708	152	43	540	10	3,453
49	702	36	18	171	3	930
51	3,121	613	33	640	8	4,415
52	1,251	297	5	246	2	1,801
53	1,157	87	16	259	4	1,523
54	2,275	119	36	463	9	2,902
55	2,619	95	36	415	15	3,180
56	2,981	100	34	653	17	3,785
57	2,534	89	32	437	15	3,107
58	2,267	61	30	368	4	2,730
59	2,574	101	29	397	11	3,112
60	1,981	90	24	656	7	2,758
61	1,579	63	20	285	3	1,950
62	3,148	175	37	372	6	3,738
63	3,030	120	59	537	11	3,757
64	2,286	65	14	306	6	2,677
65	2,677	82	23	333	7	3,122
TOTALS	46,593	2,718	606	8,667	180	58,764

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

PRECINCT STATISTICS

Ward 5

For the Period Ending: October 31, 2009

<i>PRECINCT</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
19	3,308	164	58	690	14	4,234
44	2,699	249	39	556	17	3,560
66	4,511	136	36	482	16	5,181
67	2,959	115	25	370	11	3,480
68	1,848	151	31	347	6	2,383
69	2,178	81	12	264	10	2,545
70	1,532	78	20	258	5	1,893
71	2,452	81	32	349	9	2,923
72	4,066	124	29	634	13	4,866
73	1,836	109	32	322	8	2,307
74	3,690	169	57	657	7	4,580
75	2,612	107	49	499	10	3,277
76	893	49	12	180	2	1,136
77	2,691	95	35	422	12	3,255
78	2,465	64	23	377	6	2,935
79	1,810	56	23	277	3	2,169
135	2,576	153	42	415	15	3,201
139	2,066	48	17	192	3	2,326
TOTALS	46,192	2,029	572	7,291	167	56,251

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

PRECINCT STATISTICS

Ward 6

For the Period Ending: October 31, 2009

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
1	2,466	133	40	536	8	3,183
81	4,162	284	49	730	14	5,239
82	2,170	197	21	428	11	2,827
83	2,780	206	31	532	13	3,562
84	1,804	374	29	443	7	2,657
85	2,477	529	26	600	9	3,641
86	1,964	254	31	425	7	2,681
87	2,633	209	34	451	16	3,343
88	1,862	305	21	381	3	2,572
89	2,312	649	35	652	10	3,658
90	1,374	251	12	356	8	2,001
91	3,421	310	48	737	11	4,527
127	3,478	269	60	735	15	4,557
128	1,736	174	21	476	8	2,415
130	711	319	12	253	3	1,298
131	555	116	4	133	5	813
142	1,162	166	12	283	8	1,631
143	1,914	461	25	654	12	3,066
TOTALS	38,981	5,206	511	8,805	168	53,671

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

PRECINCT STATISTICS

Ward 7

For the Period Ending: October 31, 2009

<i>PRECINCT</i>	<i>DEM</i>	<i>REP</i>	<i>STG</i>	<i>N-P</i>	<i>OTH</i>	<i>TOTALS</i>
<i>80</i>	1,298	56	12	213	5	1,584
<i>92</i>	1,516	55	17	230	8	1,826
<i>93</i>	1,388	46	12	214	6	1,666
<i>94</i>	1,826	74	17	222	2	2,141
<i>95</i>	1,529	50	23	268	2	1,872
<i>96</i>	2,122	71	30	327	3	2,553
<i>97</i>	1,237	46	15	185	4	1,487
<i>98</i>	1,735	52	20	224	8	2,039
<i>99</i>	1,311	41	12	212	7	1,583
<i>100</i>	1,700	50	17	251	3	2,021
<i>101</i>	1,611	43	18	178	5	1,855
<i>102</i>	2,228	61	21	282	7	2,599
<i>103</i>	3,253	101	30	509	14	3,907
<i>104</i>	2,357	73	31	339	7	2,807
<i>105</i>	2,003	65	25	285	5	2,383
<i>106</i>	2,906	88	28	406	5	3,433
<i>107</i>	1,593	57	15	252	2	1,919
<i>108</i>	1,155	45	8	126	2	1,336
<i>109</i>	1,005	38	6	102	1	1,152
<i>110</i>	3,835	132	38	455	12	4,472
<i>111</i>	2,104	57	28	358	6	2,553
<i>112</i>	1,890	60	15	254	4	2,223
<i>113</i>	2,088	61	14	268	6	2,437
<i>132</i>	1,917	76	14	296	1	2,304
<i>TOTALS</i>	45,607	1,498	466	6,456	125	54,152

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

PRECINCT STATISTICS

Ward 8

For Period Ending: October 31, 2009

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
114	2,744	104	38	486	20	3,392
115	2,517	87	30	544	5	3,183
116	3,420	119	47	570	11	4,167
117	1,400	52	11	235	4	1,702
118	2,327	88	39	366	4	2,824
119	2,403	126	43	461	8	3,041
120	1,431	39	11	283	4	1,768
121	2,915	92	46	509	5	3,567
122	1,691	43	25	258	4	2,021
123	2,127	121	34	387	6	2,675
124	2,303	61	29	341	4	2,738
125	3,861	121	43	582	16	4,623
126	3,321	147	36	620	19	4,143
133	1,343	43	13	177	6	1,582
134	1,925	53	31	265	7	2,281
140	1,839	64	21	273	5	2,202
TOTALS	37,567	1,360	497	6,357	128	45,909

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH**NOTICE OF FUNDING AVAILABILITY
RFA # CHP_ 11.23.09****Capital Health Project Round 4 – School Based Health Centers**

The Government of the District of Columbia, Department of Health (DOH), is soliciting applications from qualified not-for-profit organizations located and licensed to conduct business within the District of Columbia to improve access to care for high school students by operating new school-based health centers. The overall goal is to help address the primary and urgent care needs of students in the schools that will house the school-based health centers. This includes assuring appropriate confidentiality and coordination of care, making referrals for specialty care, and serving as a model medical home.

DOH is working with DC Public Schools (DCPS) and the Office of Public Education Facilities Modernization (OPEFM) to complete the build-out of the space for each health center. Each school-based health center (SBHC) will be approximately 1,800 to 2,800 square feet; the size will vary depending on the space available in the school. The school health center will include practice space for the school nurse. Details on the expected layout of the school-based health centers will be provided as part of the RFA.

An applicant may submit an application to operate the school-based health center at one, two or all of the three sites identified below:

- Ballou Senior High School
- Coolidge Senior High School
- Anacostia Senior High School

This RFA will make available up to \$2 million for: 1) start-up of the school-based health centers (including purchase of medical equipment and stocks of medications and other supplies) and 2) up to two years of operating funds. The \$2 million is the total available for all three school-based health centers (i.e., it is not \$2 million per center).

No construction funding will be available through the RFA. DOH will provide funds directly to OPEFM for the build-out/construction of the centers.

The start-up and operational funding is being provided from the Community Health Care Financing Fund in accordance with the Community Access to Health Care Amendment Act of 2006 and the East of the River Hospital Revitalization Amendment Act of 2008. These funds are currently available. The number of awards and the amount of each individual award will be determined by the Department of Health after its review of the applications submitted.

Eligible Applicants:

Eligible applicants must be not-for-profit organizations currently located and licensed to operate in the District of Columbia, and may include individual health care provider organizations, groups of providers and organizations working in partnership with health care providers to operate school-based health centers. Applications on behalf of more than one organization must include letters of intent or similar documents confirming the roles of each organization in the application.

Partnerships between not-for-profit and for-profit organizations are permitted, if a lead not-for-profit applicant is designated.

Eligible Uses of Grant Funds:

The purpose of these funds is to cover: 1) SBHC start-up costs, including purchase of medical equipment and stocks of medications and other supplies; and 2) operating costs for up to the first two years of a fully functioning school-based health center. These costs should be offset to some degree by revenues received through billing (private and public insurers) for services provided.

The RFA will be available for pick up at 825 North Capitol Street NE, Third Floor Reception, on Monday, November 23, 2009, and will also be available (as of that day) at www.opgd.dc.gov under the District Grants Clearinghouse. The deadline for submission of applications is **Tuesday, December 22, 2009 at 4:00 p.m.** Applications submitted at or after 4:01 p.m. on Tuesday, December 22 will not be forwarded to the review panel for funding consideration.

Prospective applicants obtaining this RFA through the Internet should provide the Department of Health with the following information c/o Charles Nichols (charles.nichols@dc.gov) in order to receive any amendments or clarifications that might be issued.

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

The Pre-Application Meeting for RFA # CHP_11.23.09 will be held on **December 3, 2009 from 2:00 to 3:30**, at the District of Columbia Department of Health, 825 North Capitol Street NE, 4th Floor, Conference Room 4131.

Please e-mail requests for additional information to Charles Nichols at charles.nichols@dc.gov.

**DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
HIV/AIDS, Hepatitis, STD, and TB ADMINISTRATION
BUREAU OF STD CONTROL**

**NOTICE OF FUNDING AVAILABILITY
RFA #HAHSTA_STD_11.25.09**

Sexually Transmitted Disease (STD) Clinical Services Grant

The District of Columbia Department of Health, HIV/AIDS, Hepatitis, Sexually Transmitted Disease, Tuberculosis Administration (HAHSTA), Bureau of Sexually Transmitted Disease Control (BSTDC) is soliciting applications from qualified applicants to provide STD clinical and medical support services on evenings and weekends. Approximately \$53,000.00 in CY 2010 (January 1, 2010 – December 31, 2010) Comprehensive STD Prevention Services Grant funds are expected to be available.

The target population is District of Columbia residents who are in need of such services, but specifically targeting primary and other sub-populations that are disproportionately affected by STDs. Men who have sex with men (MSM) is the primary target population. Other disproportionately affected sub-populations included: persons between 24 and 45 years of age, African-Americans, Latinos, and women of childbearing age.

These funds will be awarded to the District of Columbia Hepatitis, Sexually Transmitted Diseases, Tuberculosis Administration (HAHSTA) by the U.S. National Centers for Disease Control and Prevention (CDC) under the Comprehensive STD Prevention Services grant upon availability of funds. Services under the 2010 STD Clinical Services include syphilis, gonorrhea, and chlamydia screening, diagnosis and treatment, client education, and when appropriate, referral services.

The Request for Application (RFA) will be released on November 25, 2009. The deadline for submission is December 18, 2009, at 5:00 p.m. The RFA can be obtained from 64 New York Avenue, NE, Suite 5001, Washington, DC 20002. The RFA can be downloaded from the Executive Office of The Mayor, Office of Partnerships and Grants Development website at <http://opgd.dc.gov/opgd/site/default.asp> under District Grants Clearinghouse. For additional information, please contact Colleen Crowley, BSTDC at (202) 442-4774.

DEPARTMENT OF HEALTH CARE FINANCE**NOTICE OF PUBLIC MEETING ON 1115 CHILDLESS ADULT WAIVER**

Wednesday, November 25, 2009, 1:30PM to 3:00PM
825 N. Capitol Street, N.E., 4th Floor, Room 4131
Washington, DC 20002

The Department of Health Care Finance (DHCF) is holding a public meeting to discuss modifying the current 1115 waiver that allows DHCF to enroll individuals age 50 to 64 at or below 50% of the federal poverty level into the Medicaid program using Disproportionate Share Hospital (DSH) funds. The proposed modification would use additional DSH funds to move additional childless adults into the Medicaid program. The meeting will take place as a part of the regularly scheduled Medicaid Advisory Committee Meeting.

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

Request for Modification of Approved Plans Application No. 17474-B of ASR Group, Inc., by Metro Properties, Inc., pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, and a variance from the residential recreation space requirements under section 773, to allow the construction of a new unit apartment building in the C-2-A District at premises 1300 Rhode Island Avenue, N.E. (Square 3956, Lot 801).¹

HEARING DATE (original application):	May 23, 2006
DECISION DATE (original application):	May 23, 2006 (Bench Decision)
FINAL ORDER ISSUANCE DATE (original application):	June 6, 2006
MODIFICATION DECISION DATE:	April 1, 2008 (Bench Decision)
MODIFICATION ORDER ISSUANCE DATE:	April 2, 2008 (BZA No. 17474-A)
2nd MODIFICATION DECISION DATE:	November 3, 2009

SUMMARY ORDER ON 2nd REQUEST FOR MODIFICATION

Background.

On May 23, 2006, the Board approved the Applicant's original request for variances from lot occupancy requirements under section 772, residential recreation space requirements under section 773, and from section 2115.2 that any accessory parking area or parking garage with 25 or more required parking spaces may designate up to 40 percent of the required parking spaces for compact cars, as well as special exception pursuant to 11 DCMR §§ 3104.1 and 411.3 requiring the rooftop elements to be placed in one enclosure, to allow the construction of a new 326-unit apartment building in the C-2-A District at premises 1300 Rhode Island Avenue, N.E. (BZA Order No. 17474).

On March 4, 2008, the Board received a request from the Applicant for a minor modification of approved plans pursuant to Section 3129. The Board approved that request on April 1, 2008. (BZA Order No. 17474-A).

¹ Due to the Board's approval of the modification of plans, the need for relief changed, resulting in elimination of one variance and one special exception, both of which are no longer necessary relief. Specifically, a variance from Section 2115.2, to authorize compact car parking spaces to exceed the limitation of forty percent (40%) of total parking spaces, and a special exception from Section 411.3 to allow rooftop elements to be placed in more than one enclosure, are no longer needed. The Applicant's plan revision also removed an entire story, thereby decreasing the number of units by 60. Accordingly, the caption for the case has been altered to reflect those changes.

BZA APPLICATION NO. 17474-B**PAGE NO. 2**

On September 29, 2009, the Board received a second request for a minor modification of approved plans. The Applicant's request for a modification of plans included a request for a waiver of a now-amended six-month time requirement for filing a modification, pursuant to Section 3129 of the Zoning Regulations.² (Exhibit 37). Copies of this motion for minor modification of plans were also submitted to the Office of Planning (OP) and Advisory Neighborhood Commission (ANC) 5B as well as the Single Member District (SMD) ANC Commissioner 5B04. Pursuant to subsection 3129.4, all parties are allowed to file comments within 10 days of the filed request for modification. No parties submitted written comments concerning the requested modification. The 10 day period ended on October 13, 2009.

Modification of Plans. The project approved by the Board in 2006 in Application 17474 authorized construction of a 326-unit apartment building with 260 parking spaces that was designed and planned as a condominium project. On May 23, 2006, the Board approved the Applicant's original request for variance relief from requirements from lot occupancy, residential recreation space, and from section 2115.2 that any accessory parking area or parking garage with 25 or more required parking spaces may designate up to 40 percent of the required parking spaces for compact cars, as well as special exception pursuant to 11 DCMR §§ 3104.1 and 411.3 requiring the rooftop elements to be placed in one enclosure, to allow the construction of a new 326-unit apartment building.

Then, due to a stalling in the condominium market in the District of Columbia, as elsewhere in the United States, the Applicant redesigned the project to reduce construction costs and repositioned the planned apartments from condominiums to rental units in 2008. In BZA Order No. 17474-A, the Board approved minor plan changes on April 2, 2008, by which the number of units increased by 10; lobby and other public areas were added, and private rooftop terraces were eliminated.

In the current application for plan modification, the Applicant is requesting approval of additional plan changes, but not changes or additions to relief previously approved by the Board. These plan modifications would retain the already-approved site plan, but eliminate one floor of apartments, or 60 units, and one level of below-grade parking, or 132 spaces. In addition, the plan revisions eliminate penthouse structures that served units on the top floor, including spiral stairs, a roof room and roof decks that served those units. The resulting building would have 263 units and 136 parking spaces. (Exhibit 37, Attachment C at A-2).

² The waiver of the six-month period is no longer required, pursuant to ZC Order No. 09-01, in which the Zoning Commission amended Section 3129 by extending the period of time for filing a modification request from six months to two years. The Applicant filed the request for modification within the two-year period.

BZA APPLICATION NO. 17474-B**PAGE NO. 3**

The Board's approval of the requested revisions will not result in any change to the basic design of the exterior of the building, including all building facades. Nor will the plan revisions cause any changes to the building that will be visible to passersby, nearby neighbors, or the general public. Rather, by eliminating the penthouse structures, the roof will be simplified and the roofline thereby streamlined and unobstructed by improvements. The Board's approval of the plan revisions will result in elimination of one variance and one special exception, neither of which continue to be necessary.

The modifications are minor and do not change the material facts on which the zoning relief was approved, and therefore no new relief is required. The Applicant states that the revisions to the plan were necessitated to further reduce construction costs and improve the economics and ability to obtain financing for the project, given the difficult economy and housing market in which the District as well as the rest of the country has been in for several years.

Based upon the record before the Board, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3129.1, that the requested relief can be granted being in harmony with the general purpose and intent of the Zoning Regulations and Map. No parties opposed this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant's proposed modification of plans is consistent with the requirements of § 3129.7 of the Zoning Regulations in that the revisions represent a minor modification that does not change the material facts the Board relied upon in approving the original application.

Order No. 17474-A was issued April 2, 2008 and became effective on April 12, 2008. The order stated that it would remain valid for two years from the effective date, or April 12, 2010. This approval of a minor modification, pursuant to Section 3129, does not alter the term limit on Board action previously approved in this case. Therefore, this order shall remain valid for the same term previously adopted, that is, until April 12, 2010.

Accordingly, it is therefore **ORDERED** that (pursuant to Exhibit 37, Attachment C – Revised Plans) the application is **GRANTED**.

VOTE on Original Application (May 23, 2006): 5-0-0

(Geoffrey H. Griffis, Ruthanne G. Miller, Anthony J. Hood, John A. Mann II and Curtis L. Etherly, Jr. to approve.)

VOTE on Minor Modification of Plans (April 1, 2008): 3-0-2

(Ruthanne G. Miller, Curtis L. Etherly, Jr. and Shane L. Dettman (having read the record)

BZA APPLICATION NO. 17474-B**PAGE NO. 4**

to approve; the third Mayoral Appointee and the Zoning Commission Member not voting, not having participated in the original application.)

VOTE on Second Minor Modification of Plans (November 3, 2009): 3-0-2

(Shane L. Dettman, Meridith H. Moldenhauer (having read the record), Marc D. Loud to grant; the Third Mayoral Appointee (vacant) and the Zoning Commission Member not voting, not having participated.)

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

A majority of Board members approved issuance of this order.

FINAL DATE OF ORDER: NOV 13, 2009

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

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

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

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

Application No. 17620-A of Leon and Peggy Robbins, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirement under section 772, and a variance from the off-street parking requirements under subsection 2101.1, and pursuant to 11 DCMR § 3104.1, a special exception from the rear yard requirements under section 774, and floor area ratio requirements under section 1323, to allow the construction of a three-story mixed use building in the HS (H Street N.E. Neighborhood Commercial Overlay)/C-3-A District at premises 1383-85 H Street, N.E. (Square 1027, Lot 846).

HEARING DATE (Orig. Application): June 12, 2007 and January 15, 2008

DECISION DATE (Orig. Application): January 15, 2008

FINAL ORDER ISSUANCE DATE (Orig. Application): January 17, 2008

DECISION ON MOTION TO EXTEND ORDER: November 3 and 10, 2009

**ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17620**

The Underlying BZA Order

On January 15, 2008, the Board of Zoning Adjustment (the Board or BZA) approved the Applicant's request for variance relief from the requirements of lot occupancy and off-street parking and for special exception from the requirements for rear yards and floor area ratios, to allow construction of a three-story mixed use building in the HS (H Street N.E. Neighborhood Commercial Overlay)/C-3-A District. Thus, pursuant to 11 DCMR § 3104.1, the Board approved special exceptions from the rear yard requirements under section 774 and from the floor area ratio requirements under section 1323, and pursuant to 11 DCMR § 3103.2, variances from the lot occupancy requirements under section 772 and from the off-street parking requirements under subsection 2101.1, to construct a three-story mixed use building in the HS (H Street N.E. Neighborhood Commercial Overlay)/C-3-A District at premises 627-631 H Street, N.W. (Square 453, Lots 53 and 810). The Order was issued January 17, 2008. (BZA Order 17620)

Under the Order, and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued – until January 17, 2010.

BZA APPLICATION NO. 17620-A

PAGE NO. 2

Section 3130.1¹ states:

No order [of the Board] authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility(EEF), unless within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, except as permitted in § 3130.6.

(11 DCMR § 3130.1)

Motion to Extend

On September 14, 2009, the Board received a letter from the Applicant, which requested, pursuant to 11 DCMR §3130.6,² a two-year extension in the authority granted in the underlying BZA Order, which was due to expire January 17, 2010. (Exhibit 43). A copy of the request for an extension was served on the parties to the application, Advisory Neighborhood Commission 6A (ANC 6A) and the Office of Planning (OP). The Board received additional, supplemental material from the Applicant in support of the request for a time extension, pursuant to §3130.6. (Exhibits 44 and 45).

The Applicant is requesting a two-year extension in the authority granted in the underlying BZA Order because of the Applicant's inability to obtain financing due to economic and market conditions beyond the Applicant's control. The Applicant has, over the past two years, sought financing from a number of different sources and has been unable to obtain commitments to allow the project to proceed. The extension would allow the Applicant the additional time in which to secure financing.

Accordingly, the Applicant requested that, pursuant to § 3130.6 of the Regulations, the Board extend the validity of its prior Order for an additional two years, thereby allowing the Applicant additional time to secure financing and apply for a building permit.

Criteria for Evaluating Motion to Extend

The Zoning Commission adopted 11 DCMR § 3130.6 in Zoning Commission Case No. 09-01. The Section became effective on June 5, 2009.

¹ Section 3130.1 was amended by the addition of the phrase "except as permitted in § 3130.6" by the Zoning Commission in Z.C. Case No. 09-01. The amendment became effective on June 5, 2009.

² Section 3130.6 was adopted by the Zoning Commission in Z.C. Case No. 09-01 and became effective on June 5, 2009.

BZA APPLICATION NO. 17620-A

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Section 3130.6 of the Zoning Regulations states in full:

3130.6 The Board may 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 the Board determines that the following requirements are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application; and
- (c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria:
 - (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;
 - (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or
 - (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

(11 DCMR § 3130.6)

The Board finds that the Applicant has met the criteria set forth in this provision. The filing of the motion on September 14, 2009, prior to the expiration date, tolled the effect of the order. The request was served on all the parties to the application and those parties were given 30 days in which to respond under § 3130.6(a). The Applicant's inability to secure financing and the poor economic conditions in the District constitute the "good cause" required under § 3130.6(c)(1).

BZA APPLICATION NO. 17620-A

PAGE NO. 4

As required by § 3130.6(b), there is no substantial change in any of the material facts upon which the Board based its original approval. (Exhibit 43). In requesting this extension of the Order, the Applicant's plans for development of the site would be unchanged from those approved by the Board in its Order dated October 16, 2007 (Exhibit No. 29 in the record). There have been no changes to the zone district classification applicable to the property or to the Comprehensive Plan affecting this site since the issuance of the Board's Order.

Neither the ANC nor any party to the application objected to an extension of the Order. The Board concludes that the extension of that relief is appropriate under the current circumstances.

Accordingly, pursuant to § 3130.6 of the Regulations, the Board hereby extends the validity of the underlying Order, for a period not to exceed two years from the current expiration date, thereby establishing a new expiration date of January 17, 2012.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this request for extension of time be **GRANTED** until January 17, 2012.

VOTE: 4-0-1 (Marc D. Loud, Meridith H. Moldenhauer, Shane L. Dettman, and Michael G. Turnbull to approve; no other Board member participating, nor voting)

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

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

FINAL DATE OF ORDER: NOV. 17, 2009

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

PURSUANT TO 11 DCMR § 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.

BZA APPLICATION NO. 17620-A

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

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

Application No. 17684-A of Mid-Atlantic Realty Partners, LLC, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for variances from the rear yard requirements under section 774, the limitation on compact parking space requirements under subsection 2115.2, and the off-street loading facility requirements under section 2201, and a special exception from the required number of off-street parking spaces under section 2108, to permit the development of an office building with retail space on the ground floor, in the DD/C-2-C District at the southeast corner of the intersection of 6th and K Streets, N.W. (Square 484, Lots 23, 811-813, and 826).

HEARING DATE (Orig. Application): November 20, 2007

DECISION DATE (Orig. Application): November 20, 2007 (Bench Decision)

FINAL ORDER ISSUANCE DATE (Orig. Application): November 30, 2007

DECISION ON MOTION TO EXTEND ORDER: November 10, 2009

**ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 17684**

The Underlying BZA Order

On November 20, 2007, the Board of Zoning Adjustment (the Board or BZA) approved the Applicant's request for variances from the requirements for rear yards, limitations on compact parking spaces, and off-street loading facilities, as well as a special exception from the requirements from the off-street parking spaces, to permit the development of an office building with retail space on the ground floor, in the DD/C-2-C District. Thus, pursuant to 11 DCMR § 3103.2, the Board approved variances from the rear yard requirements under section 774, the limitation on compact parking space requirements under subsection 2115.2, and the off-street loading facility requirements under section 2201, and pursuant to 11 DCMR § 3104.1, a special exception from the required number of off-street parking spaces under section 2108, to permit the development of an office building with retail space on the ground floor, in the DD/C-2-C District at the southeast corner of the intersection of 6th and K Streets, N.W. (Square 484, Lots 23, 811-813, and 826). The Order was issued November 30, 2007. (BZA Order 17684).

Under the Order, and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued – until November 30, 2009.

BZA APPLICATION NO. 17684-A

PAGE NO. 2

Section 3130.1¹ states:

No order [of the Board] authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility(EEF), unless within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, except as permitted in § 3130.6.

(11 DCMR § 3130.1)

Motion to Extend

On September 30, 2009, the Board received a letter from the Applicant, which requested, pursuant to 11 DCMR §3130.6,² a two-year extension in the authority granted in the underlying BZA Order, which was due to expire November 30, 2009. (Exhibit 38). A copy of the request for an extension was served on the parties to the application, Advisory Neighborhood Commission 6C (ANC 6C) and the Office of Planning (OP).

The Applicant is requesting a two-year extension in the authority granted in the underlying BZA Order because of the Applicant's inability to obtain financing due to economic and market conditions beyond the Applicant's control. The Applicant has, over the past two years, sought financing from a number of different sources and has been unable to obtain commitments to allow the project to proceed. The extension would allow the Applicant the additional time in which to secure financing.

Accordingly, the Applicant requested that, pursuant to § 3130.6 of the Regulations, the Board extend the validity of its prior Order for an additional two years, thereby allowing the Applicant additional time to secure financing and apply for a building permit.

Criteria for Evaluating Motion to Extend

The Zoning Commission adopted 11 DCMR § 3130.6 in Zoning Commission Case No. 09-01. The Section became effective on June 5, 2009.

Section 3130.6 of the Zoning Regulations states in full:

¹ Section 3130.1 was amended by the addition of the phrase "except as permitted in § 3130.6" by the Zoning Commission in Z.C. Case No. 09-01. The amendment became effective on June 5, 2009.

² Section 3130.6 was adopted by the Zoning Commission in Z.C. Case No. 09-01 and became effective on June 5, 2009.

BZA APPLICATION NO. 17684-A

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3130.6 The Board may 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 the Board determines that the following requirements are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application; and
- (c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria:
 - (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;
 - (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or
 - (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

(11 DCMR § 3130.6)

The Board finds that the Applicant has met the criteria set forth in this provision. The filing of the motion on September 30, 2009, prior to the expiration date, tolled the effect of the order. The request was served on all the parties to the application and those parties were given 30 days in which to respond under § 3130.6(a). The Applicant's inability to secure financing and the poor economic conditions in the District constitute the "good cause" required under § 3130.6(c)(1).

BZA APPLICATION NO. 17684-A

PAGE NO. 4

As required by § 3130.6(b), there is no substantial change in any of the material facts upon which the Board based its original approval. (Exhibit 38). In requesting this extension of the Order, the Applicant's plans for development of the site would be unchanged from those approved by the Board in its Order dated October 16, 2007 (Exhibit No. 24H in the record). There have been no changes to the zone district classification applicable to the property or to the Comprehensive Plan affecting this site since the issuance of the Board's Order.

Neither the ANC nor any party to the application objected to an extension of the Order. The Board concludes that the extension of that relief is appropriate under the current circumstances.

Accordingly, pursuant to § 3130.6 of the Regulations, the Board hereby extends the validity of the underlying Order, for a period not to exceed two years from the current expiration date, thereby establishing a new expiration date of November 30, 2011.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this request for extension of time be **GRANTED** until November 30, 2011.

VOTE: 3-0-2 (Marc D. Loud, Shane L. Dettman, Meridith H. Moldenhauer to approve; no other Board members participating, nor voting)

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

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

FINAL DATE OF ORDER: NOV. 17, 2009

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

PURSUANT TO 11 DCMR § 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.

BZA APPLICATION NO. 17684-A

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

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

Application No. 17934-A of Behzad Hoseninkhani, pursuant to 11 DCMR § 3103.2, for variances from the nonconforming structure provisions under subsection 2001.3, the lot occupancy requirements under subsection 403.2, and rear yard setback requirements under subsection 404.1, to allow a third story addition to an existing flat (two-family dwelling) in the R-4 District at premises 1721 4th Street, N.W. (Square 519, Lot 54).¹

HEARING DATE: July 28, 2009

DECISION DATES: October 6 and 27, 2009

CORRECTED SUMMARY ORDER²

REVIEW BY THE ZONING ADMINISTRATOR

The Application was accompanied by a letter, dated December 31, 2008, from the Zoning Administrator. (Exhibit 25)

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register and by mail to Advisory Neighborhood Commission (ANC) 5C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5C, which is automatically a party to this application. ANC 5C filed a report, indicating that with a quorum present, the ANC voted on July 21, 2009, to recommend approval of the application.³ (Exhibit 28). The ANC filed a subsequent report, dated October 5, 2009, after reviewing the revised plans, and indicated that the ANC, at a duly noticed meeting with a quorum present, voted to recommend approval of the application. (Exhibit 31). The Office of Planning (OP) submitted a report in support of the application. (Exhibit 21). M. Marie Maxwell testified in opposition to the application, both for herself and Mr. Grumbine. Both of them also submitted letters in opposition. (Exhibits 26 and 27). The record also contains one letter and a petition with 20 signatures in support of the application. (Exhibits 23 and 24).

¹ The application was amended to include relief from the requirements of lot occupancy under subsection 403.2 and rear yard setback requirements under subsection 404.1. At the hearing the Board expressed some reservations concerning the Applicant's design and, in response, the Applicant submitted revised plans. Revised plans were filed and the Board's approval was based on those revised plans. (Exhibit 30).

² The order was revised to correct the Square number from 516 to 519.

³ The Board questioned whether the ANC had properly notified the community of the meeting and its consideration of the project. The ANC's first report was silent as to that issue.

BZA APPLICATION NO. 17934-A

PAGE NO. 2

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2, for variances from subsections 2001.3, 403.2, and 404.1. Based upon the record before the Board and having given great weight to the OP and ANC report filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 2001.3, 403.2, and 404.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. No parties appeared at the public hearing in opposition to this application.⁴ Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 30 – Amended Plans) be **GRANTED**.

VOTE: **4-0-1** (Shane L. Dettman, Peter G. May, Marc D. Loud, Meridith H. Moldenhauer to APPROVE. No other Board members participating or voting.)

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

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

FINAL DATE OF ORDER: NOV 18, 2009

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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

⁴ Neither Ms. Maxwell nor Mr. Grumbine requested or were granted party status.

BZA APPLICATION NO. 17934-A

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

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

Application No. 17972 of the Kingdom of Sweden by the National Property Board Sweden, on behalf of the Embassy of Iceland, pursuant to 11 DCMR § 1002, and § 206 of the Foreign Missions Act, 22 U.S.C. § 4306, to locate a chancery in excess of the permitted non-residential 2.0 floor area ratio limitation of § 931.3, in the W-2 District at premises 2900 K Street, N.W. (Square 1171, Part of Lot 82, including Lots 814, 7001 and 7002).

NOTICE OF FINAL RULEMAKING

and

DETERMINATION AND ORDER

The Board of Zoning Adjustment, pursuant to the authority set forth in § 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Official Code, § 6-1306) (2001), and Chapter 10 of the Zoning Regulations of the District of Columbia, 11 DCMR, hereby gives notice of the adoption of its determination not to disapprove the application of the Kingdom of Sweden by the National Property Board of Sweden, on behalf of the Embassy of Iceland, to locate a chancery in excess of the permitted 2.0 floor area ratio limitation on non-residential uses at premises 2900 K Street, N.W. (Square 1171, Part of Lot 82, including Lots 814, 7001 and 7002).

Procedural Background

On May 15, 2009, the Applicant filed a chancery application with the Board requesting that the Board not disapprove the application. Pursuant to 11 DCMR § 3134.7, the application was accompanied by a letter from the United States Department of State, dated May 13, 2009, certifying that the Applicant had complied with Section 205 of the Foreign Missions Act (22 USC § 4305)(D.C. Official Code § 6-1305) and that the application could be submitted to the Board.

On May 18, 2009, the Office of Zoning provided notice of the filing of the application to the Department of State. On May 19, 2009, the Office of Zoning provided notice of the filing of the application to the District of Columbia Office of Planning; Advisory Neighborhood Commission (ANC) 2E, the ANC for the area within which the subject property is located; the ANC Commissioner for the affected Single Member District; the Ward 2 Councilmember; the District of Columbia Department of Transportation; the U.S. Commission of Fine Arts; and the District of Columbia Historic Preservation Office.

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 17972**PAGE NO. 2**

Notice of the filing of the application and notice of the proposed rulemaking were published in the D.C. Register on May 29, 2009 and June 5, 2009 (56 DCR 252 and 56 DCR 4412, respectively). In accordance with the Zoning Regulations, the Board provided written notice to the public more than 40 days in advance of the public hearing. 11 DCMR §§ 3113.13 and 3149.9(c). Therefore, in compliance with the D.C. Administrative Procedure Act (D.C. Official Code Sections 2-501, *et. seq*), the Board also provided more than thirty days' written notice to the public.

The Office of Zoning subsequently scheduled a public hearing on the application for September 1, 2009, and provided notice of the hearing by mailing a copy of the notice of hearing on June 3, 2009 to the Applicant, to ANC 2E, and to all owners of property within 200 feet of the subject property. Notice of the hearing was also published in the D.C. Register on June 5, 2009 (56 DCR 4337), and posted in the Office of Zoning. In addition, on August 10, 2009, the Applicant posted notice on the property in plain view of the public in accordance with 11 DCMR § 3113. The notice given to the public complied with the requirements of 11 DCMR § 3134.9.

The Subject Property

The property that is the subject of the application is located at 2900 K Street, N.W. and is known as Square 1171, Part of Lot 82, including Lots 814, 7001 and 7002. The property is in the W-2 zone district, as well as the Old Georgetown Historic District. The property is bounded by Rock Creek on the east, 30th Street on the west, National Park Service property and the Potomac River on the south, and the Whitehurst Freeway on the north.

The building on the site was constructed in 2005 as a matter of right, in compliance with all applicable DC Zoning Regulations. The building has two separate "towers", both of which have an address of 2900 K Street, N.W. The south "tower," known as House of Sweden, and located on Tax Lot 814, is a four-story building, with one below-grade level. House of Sweden is occupied by the chancery of the Kingdom of Sweden on a portion of the first and all of the second floors, (Air Rights Lot 7001) with commercial conference, meeting, function and exhibit space on the lower level and first floor. The top two floors (Air Rights Lot 7002) contain a mix of office and residential uses. The north "tower" (Condominium Lots 2001 through 2012) is a five-story building. The lower level and floors one through four are devoted to office use. The fifth floor contains primarily residential use, and also includes the chancery of the Embassy of Liechtenstein. There is a one-level parking garage for the building, located beneath both towers, which is accessed at grade from the north tower.

The property contains 61,260 square feet of land area. The W-2 zone permits a maximum FAR of 4.0, of which up to 2.0 FAR may be devoted to non-residential uses. The two towers together currently contain 122,219 square feet of gross floor area devoted to office use (2.0 FAR), and 54,243 square feet of gross floor area devoted to residential use (0.88 FAR).

BZA APPLICATION NO. 17972**PAGE NO. 3****The Applicant's Proposal**

The Chancery Office of the Embassy of Iceland will occupy Unit 509 in House of Sweden. The adjacent Unit 508 will be occupied as the residence of the Deputy Chief of Mission. That residential use does not require review by the BZA. Unit 509 contains 2,742 square feet of gross floor area (the total is 3,225 square feet including common space allocated to Unit 509 in the hallway and lobby). With this occupancy, the total non-residential FAR will be 2.05, which is 0.05 FAR greater than the maximum non-residential use permitted in a W-2 District pursuant to 11 DCMR § 931.3. A chancery is permitted as a matter of right in a W-2 Zone, and in other mixed-use commercial zones, subject to compliance with all matter of right area limitations. When an otherwise matter of right chancery will not comply with such area requirements, its location or expansion becomes subject to BZA review. See Application No. 16206 (Embassy of the Kyrgyz Republic); Application No. 15494 (Royal Embassy of Thailand), and Application No. 14794 (Embassy of Spain). However, the BZA does not undertake the analysis set forth in the Zoning Act and Regulations for granting area relief, but instead applies only the six factors stated in FMA § 406(d); D.C. Official Code § 6-1306(d). See e.g. *Embassy of the People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 310, 318 (D.C.,1987) (FMA is the exclusive procedure available to a matter of right chancery to obtain a special exception for construction of a radio tower and antenna).

The Hearing

The Embassy of Iceland's Deputy Chief of Mission testified that the chancery currently includes a staff of four diplomats and three non-diplomatic staff. There is an average of five to seven visitors to the Embassy on a daily basis, including deliveries, but this number could vary widely in any given month. He explained that most business is conducted by telephone, e-mail and other correspondence. He stated that parking for one diplomatic vehicle will be provided in the parking garage beneath the building, and that the Embassy intends to rent spaces for up to four vehicles (depending upon the needs of the Chancery) in the public parking garage at the corner of 30th and K Streets, N.W., adjacent to the north tower. The Circulator Bus, and seven Metrobus routes, run along M Street, N.W. The site is also well served by taxi cabs, and is within a short walking distance from the Foggy Bottom/GWU Metrorail Station. The meeting facilities and function space in the lower level of House of Sweden will be available to the Embassy of Iceland for meetings and functions, if desired. The Embassy will place its official seal on the north façade of the building, adjacent to the official seal of the Embassy of Sweden.

The Department of State submitted a favorable report on the application, dated July 17, 2009. The Office of Planning submitted a report on August 25, 2009, recommending that the Board of Zoning Adjustment not disapprove the application. The Office of Planning report also noted that the location of the official seal on the north façade of the south tower is subject to review by the Commission of Fine Arts and the D.C. Historic Preservation Review Board. By letter dated July 8, 2009, Advisory Neighborhood Commission 2E reported to the Board that it voted to recommend approval of the application. No reports were received from the District of Columbia

BZA APPLICATION NO. 17972**PAGE NO. 4**

Department of Transportation, the U.S. Commission of Fine Arts, or the District of Columbia Historic Preservation Office.

Evaluation of the Application

Subsection 406(d) of the Foreign Missions Act, D.C. Official Code § 6-1306(d) directs the Board to consider six factors when analyzing a chancery application. For certain of these factors, the provision also indicates who is to make the relevant finding. These six factors are:

1. The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital

As recommended by the Secretary of State and the Office of Planning, the Board finds that favorable action on the application will fulfill the international obligation of the United States to facilitate the acquisition of adequate and secure premises by the Government of Iceland for its diplomatic mission in the Nation's Capital.

2. Historic preservation, as determined by the Board of Zoning Adjustment in carrying out this section; and in order to ensure compatibility with historic landmarks and districts, substantial compliance with District of Columbia and Federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks.

The location of the chancery will include the alteration of a building that is located in the Old Georgetown Historic District, but is not a landmark. Indeed, the building was constructed just a few years ago. Subsection 406 (d)(2) of the Foreign Missions Act, D.C. Official Code §6-1306 (d)(2) only requires substantial compliance with District and federal regulations governing historic preservation laws “with respect to *new construction and to demolition of or alteration to historic landmarks.*” The Applicant will not be undertaking new construction, nor will it be alternating a landmark. Therefore, this portion of the factor is not relevant to the Board’s decision.

Even though the alteration of a non-landmarked building in a historic district is not specifically mentioned in the factor, the Board believes that the compatibility of such alterations should be considered. The Board finds no incompatibility with the Old Georgetown Historic District will result from the alteration. The exterior of the existing building already includes the official seal of the Embassy of Sweden. The proposed alteration would only add another similarly sized seal on the building’s north face.

The Board will not address the Office of Planning's view that the proposed alteration is subject to further review by the Commission of Fine Arts and the Mayor’s Agent. The Board is only required to rule upon the scope of its jurisdiction and not the jurisdiction of others.

BZA APPLICATION NO. 17972**PAGE NO. 5****3. The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary of State, after consultation with Federal agencies authorized to perform protective services**

The Board finds that the Embassy of Iceland's proposal to provide parking for one diplomatic vehicle will be sufficient for the Embassy's use. Additionally, there is a public parking garage immediately north of the north tower, where the National Property Board has an option to lease up to 24 parking space. The Embassy also intends to rent spaces for up to four vehicles (depending upon the needs of the Chancery) in that public parking garage. The building is a short walking distance from the Foggy Bottom/GWU Metrorail Station, and is in close proximity to the Circulator Bus and Metrobus Routes along M Street in Georgetown. In addition, there is a taxi stand at Washington Harbour, located across 30th Street from the building. There is metered parking along K Street, as well as along 30th Street to the north of K Street, plus a metered parking lot across Rock Creek from the site, and a number of privately-owned parking facilities within two blocks of the site.

Furthermore, the Secretary of State has not recommended any special security requirements related to parking, as indicated in the letter from the Department of State (Exhibit 30) and the testimony of Richard Massey, Office Director in the Office of Foreign Missions at the Department of State. (T., p. 23).

4. The extent to which the area is capable of being adequately protected, as determined by the Secretary of State, after consultation with Federal agencies authorized to perform protective services

After consultation with Federal agencies authorized to perform protective services, the Secretary of State has determined that the subject property and area are capable of being adequately protected. (Letter from the Department of State, Exhibit 30).

5. The municipal interest, as determined by the Mayor

The Director of the Office of Planning, on behalf of the Mayor of the District of Columbia, has determined that favorable action on this application is in the municipal interest and is consistent with the Comprehensive Plan. (OP Report, Exhibit 33).

6. The Federal interest, as determined by the Secretary of State

The Secretary of State has determined that a favorable decision on this application would serve the Federal interest. Both the national and municipal governments of Iceland have assisted with the zoning and land use needs of the U.S. Embassy in Reykjavik. (Letter from the Department of State, Exhibit 30).

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Having considered the above factors, it is hereby **ORDERED** that this application is **NOT DISAPPROVED**.

Vote of the Board of Zoning Adjustment taken at its public meeting on September 1, 2009, not to disapprove the application.

VOTE: 4-0-1 (Marc D. Loud, Meridith H. Moldenhauer, Peter G. May, and Marcel A. Acosta to not disapprove; no other Board members participating)

BY THE DC BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: NOVEMBER 13, 2009

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

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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

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

Application No. 17981 of Fat Face Bar-B-Que, pursuant to 11 DCMR § 3103.2, for a variance from the use provisions for a fast food restaurant under subsection 701.1, in the C-1 District at premises 5315 East Capitol Street, S.E. (Square 5284, Lot 113).

HEARING DATE: November 3, 2009

DECISION DATE: November 3, 2009

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

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

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission (ANC) 7E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7E, which is automatically a party to this application. ANC 7E did not submit a report related to the application. The Office of Planning submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from § 701.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking a variance from §701.1, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

BZA APPLICATION NO. 17981

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VOTE: **3-0-2** (Shane L. Dettman, Meridith H. Moldenhauer and Konrad W. Schlater to APPROVE; Marc D. Loud not present, not voting; one Mayoral appointee (vacant) not participating)

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

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

FINAL DATE OF ORDER: NOVEMBER 13, 2009

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

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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

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

Application No. 17986 of 1301 Florida Avenue LLC, pursuant to 11 DCMR § 3104.1, for a special exception to allow a change of nonconforming use from a barber shop to a pick up dry cleaners under subsection 2003.1, in the R-5-B District at premises 1301 Florida Avenue, N.W. – First Floor (Square 2868, Lot 100).

HEARING DATE: November 10, 2009

DECISION DATE: November 10, 2009

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B did not participate in the application. The Board received and considered a letter from Andrew Hudson and Sousan Arefeh in opposition to the application. The Office of Planning (OP) submitted a report recommending approval of the pick-up dry cleaners as a use variance.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under subsection 2003.1. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 2003.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

BZA APPLICATION NO. 17986

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

VOTE: **4-0-1** (Meridith H. Moldenhauer, Marc D. Loud, Anthony J. Hood, and Shane L. Dettman to Approve. The third mayoral appointee position vacant)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: November 13, 2009

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-37A**

Z.C. Case No. 05-37A

Station Townhouses, LLC

(Two-Year Time Extension at G, H, 2nd and 3rd Streets, N.E.)

October 19, 2009

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on October 19, 2009. At the meeting, the Commission approved a request from Station Townhouses, LLC (the "Applicant") for a time extension for an approved consolidated Planned Unit Development ("PUD") and related map amendment for property consisting of Lots 39-41, 45, 48, 801, 804-806, 811, 813, 814, 856, 857, and 860 in Square 752 (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. 05-37 ("Order No. 05-37"), the Commission approved a consolidated PUD and related zoning map amendment for a portion of the Property to C-3-C. The approved PUD authorized construction of a residential building containing a maximum of 389,101 square feet of gross floor area, having a maximum density of 5.07 FAR. The project will include approximately 302 residential units and 25,777 square feet of gross floor area devoted to ground floor retail and second floor professional space. The ground floor retail will be generally located at the corner of 3rd and H Streets and along 2nd Street to G Street. The maximum height of the building will be 100 feet at the corner of 2nd and H Streets, with steps in heights and set backs as shown on the approved plans. The project will include a minimum of 318 parking spaces in a below-grade parking garage as well as 60 tandem residential parking spaces. The project will include approximately 20,570 square feet of gross floor area devoted to affordable housing units as well as a variety of public benefits and project amenities. Order No. 05-37 became effective upon its publication in the *D.C. Register* ("DCR") on April 11, 2008.
2. By letter dated and received by the Commission on September 3, 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 be filed no later than April 11, 2012, and construction must be started no later than April 11, 2013. The Applicant's request was supported by an affidavit from the Applicant setting forth details of the Applicant's inability to obtain project financing at this time, as discussed in Finding Nos. 3 and 4.
3. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. The Applicant has taken many steps to move the project forward, including the following:

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- (a) Recording a PUD Covenant in the Land Records for the District of Columbia, as required by Condition No. 25 of Order No. 05-37 and § 2409.3 of the Zoning Regulations;
 - (b) Donating \$83,500 to the Capitol Hill Restoration Society on November 12, 2008, for use in completing a professional survey of properties for inclusion in a possible future extension of the Capitol Hill Historic District, in accordance with Condition No. 20 of Order No. 05-37;
 - (c) Fulfilling the obligations of Condition No. 21 of Order No. 05-37, requiring the Applicant to survey and document those potentially eligible structures to be demolished within the Property in accordance with the standards for documentation set forth in the record of Case No. 05-37; and
 - (d) Submitting raze permit applications in April 2008, for razing operations on the Property, which as of the date of the application have been approved by the D.C. Historic Preservation Office but are still pending approval from other District departments.
4. The real estate market has been subject to, and continues to suffer from, severe financing, construction, sales, and other impediments. As a result of the current economic climate and uncertainty in market conditions, financial institutions have frozen lending operations or ceased them entirely. Based on the Statement of Facts of the Applicant dated September 2, 2009 and submitted with the application, the Applicant has been unable to obtain project financing for the approved PUD project despite its continuing support for the project, track record, and financial wherewithal. The Applicant's best efforts have not resulted in project financing from the various lending institutions with which it has worked. Thus, there is not sufficient project financing for the project to move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control.
 5. The Applicant served a copy of the request on all parties (including Advisory Neighborhood Commission ("ANC") 6C, Square 752 Residents, and the Stanton Park Neighborhood Association) on September 3, 2009. None of the parties responded to the application.
 6. 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 of the approved PUD should be granted.
 7. Based on the report of the Office of Planning and the photographs included therein, the Commission finds that there has been no detrimental change in the condition of the Property since approval of the PUD that would indicate that the application should not be granted.

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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 Zoning 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 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.
4. The Commission is required under D.C. Official Code § 1-309.10(d) (2001) to give great weight to the affected ANC's recommendations. The ANC did not respond to the application.
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.

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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 consolidated PUD and related map amendment approved in Zoning Commission Case No. 05-37. The consolidated PUD and related map amendment approved by the Commission shall be valid until April 11, 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 April 11, 2013.

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 October 19, 2009, upon the motion of Chairman Hood, as seconded by Vice Chairman Keating, the Zoning Commission **ADOPTED** this Order by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, 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 November 20, 2009.