

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

**SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS**

**December 2009**

<b>CONTACT PERSON</b>	<b>BOARDS AND COMMISSIONS</b>	<b>DATE</b>	<b>TIME/ LOCATION</b>
John McFarland	Board of Accountancy	1	8:30 am-12:00pm
Leon Lewis	Board of Appraisers	16	10:00 am-12:00 pm
Leon Lewis	Board Architects and Interior Designers	4	9:00 am-1:00 pm
Sheldon Brown	Board of Barber and Cosmetology	7	10:00 am-4:00 pm
Sheldon Brown	Boxing and Wrestling Commission	8	7:00-pm-9:00 pm
Sheldon Brown	Board of Funeral Directors	3	1:30 pm-5:00 pm
John McFarland	Board of Professional Engineering	17	9:30 am-1:30 pm
Leon Lewis	Real Estate Commission	8	10:30 am-12:30 pm
Pamela Peters	Board of Industrial Trades	22	2:00 pm-5:00 pm
	Asbestos Electrical Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

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

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS****CONSTRUCTION CODES COORDINATING BOARD****NOTICE OF SPECIAL MEETING**

The Construction Codes Coordinating Board will be holding a special meeting on Wednesday, December 2, 2009 at 9:30 am. The meeting will be held at 941 North Capitol Street, NE, Suite 9500 (9<sup>th</sup> Floor), Washington, D.C. 20002.

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

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

The District of Columbia Board of Elections and Ethics hereby gives notice that there are vacancies in six (6) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

**VACANT: 3D07, 5B06, 6B11, 8C05, 8C06, 8E01**

Petition Circulation Period: **Monday, November 30, 2009 thru Monday, December 21, 2009**

Petition Challenge Period: **Thursday, December 24, 2009 thru Thursday, December 31, 2009**

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

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

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

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:

Roger Burns  
Single-Member District 3C04

**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](http://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](mailto: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](mailto: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.

**HYDE LEADERSHIP PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Owner's Representative**

INVITATION TO BID: The Hyde Leadership Public Charter School is accepting bids to be the Owner's Representative in the \$21.4 million renovation of the Taft Center, located at 3825 18th Street, NE, Washington DC. The renovation will begin in December and the building will be ready for occupancy for the first day of school in September, 2010.

To obtain RFP documents and bid specifications, please contact Anne Hedman, Chief Operating Officer. Telephone: (202) 551-0830. Email: [ahedman@hydedc.org](mailto:ahedman@hydedc.org). Site visits can be arranged.

Bids must be marked **Attention: Business Office** and received no later than the 5:00 p.m. December 4, 2009. The contract will be awarded to the qualified bidder with the most points in the evaluation criteria.

**DISTRICT OF COLUMBIA COMMISSION ON  
JUDICIAL DISABILITIES AND TENURE**

Judicial Tenure Commission Begins Reviews Of  
Judges John A. Terry, Gregory E. Mize, and Patricia A. Wynn

This is to notify members of the bar and the general public that Judge John A. Terry of the District of Columbia Court of Appeals, and Judges Gregory E. Mize and Patricia A. Wynn of the Superior Court of the District of Columbia have requested recommendations for reappointment as Senior Judges.

The District of Columbia Retired Judge Service Act P.L. 98-598, 98 Stat. 3142, as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §13(1) provides in part as follows:

"...A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.

(2) The Commission shall submit a written report of its recommendation and findings to the appropriate chief judge of the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.

(3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final."

The Commission hereby requests members of the bar, litigants, former jurors, interested organizations and members of the public to submit any information bearing on the qualifications of Judges Terry, Mize, and Wynn which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials will be kept confidential unless expressly authorized by the person submitting the information.

All communications should be mailed, or faxed, by **December 23, 2009**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure  
Building A, Room 246  
515 Fifth Street, N.W.  
Washington, D.C. 20001  
Telephone: (202) 727-1363  
FAX: (202) 727-9718

The members of the Commission are:

Hon. Gladys Kessler, Chairperson  
William P. Lightfoot, Esq., Vice Chairperson  
Gary C. Dennis, M.D.  
Michael K. Fauntroy, Ph.D.  
Noel J. Francisco, Esq.  
Shirley A. Higuchi, Esq.  
Claudia A. Withers, Esq.

BY: /s/ Gladys Kessler  
Chairperson

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

**Application No. 17676-A of Innovative Recyclers, Inc.**, pursuant to 11 DCMR § 3103.2, for a variance from building height requirements under subsection 840.1, and pursuant to 11 DCMR § 3104.1, for a special exception to establish a solid waste handling facility under subsection 802.4, in the LO/C-M-1 District at premises 2225 Lawrence Avenue, N.E. (Square 4106, Lot 820).

**HEARING DATE (Orig. Application):** October 23, 2007

**DECISION DATE (Orig. Application):** October 23, 2007 (Bench Decision)

**FINAL ORDER ISSUANCE DATE (Orig. Application):** October 26, 2007

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

**ORDER ON MOTION TO EXTEND  
THE VALIDITY OF BZA ORDER NO. 17676**

The Underlying BZA Order

On October 23, 2007, the Board of Zoning Adjustment (the Board or BZA) approved the Applicant's request for variance relief from building height requirements and for a special exception to establish a solid waste handling facility in the LO/C-M-1 District. Thus, pursuant to 11 DCMR § 3103.2, the Board granted a variance from building height requirements under subsection 840.1 and pursuant to 11 DCMR § 3104.1, the Board approved a special exception to establish a solid waste handling facility in the LO/C-M-1 District at premises 2225 Lawrence Avenue, N.E. (Square 4106, Lot 820). The Order was issued October 26, 2007. (BZA Order 17676)

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 October 26, 2009.

Section 3130.1<sup>1</sup> 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.

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<sup>1</sup> 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.

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(11 DCMR § 3130.1)

### Motion to Extend

On August 24, 2009, the Board received a letter from the Applicant, which requested, pursuant to 11 DCMR §3130.6,<sup>2</sup> a two-year extension in the authority granted in the underlying BZA Order, which was due to expire October 26, 2009. (Exhibit 37). The Board received additional, supplemental material from the Applicant in support of the request for a time extension, pursuant to §3130.6. (Exhibit 39).

The Applicant is requesting a two-year extension in the authority granted in the underlying BZA Order because of the Applicant's inability in securing a permit from DCRA and the Applicant's resultant inability to obtain financing due to that delay in its securing the necessary permits as well as economic and market conditions beyond the Applicant's control. The Applicant has, over the past two years, sought to secure the necessary permits and financing 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 the permits and 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:

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;

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

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- (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 August 24, 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 the necessary permits and financing and the poor economic conditions in the District constitute the "good cause" required under § 3130.6(c)(1).

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. 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 26, 2007 (Exhibit No. 35 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.

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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 October 26, 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 October 17, 2011.

**VOTE: 4-0-1** (Marc D. Loud, Meridith H. Moldenhauer, Shane L. Dettman, and Michael G. Turnbull to approve; one mayoral (vacant) appointee not 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 20, 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.

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,

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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. 17837-A of Hillcrest Homes LP**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the maximum number of building stories under § 400, a variance from the lot area and width requirements under § 401, a variance from the rear yard requirements under § 404, a variance from the side yard requirements under § 405, a special exception to permit two or more principal buildings or structures on a single subdivided lot under § 2516, and a variance from the requirement of § 2516.5 that theoretical lots allowed pursuant to § 2516 provide open space in front of the building entrances to construct a new residential development consisting of 54 one-family detached dwellings in the R-1-B District at premises north side of Southern Avenue, S.E., just west of Branch Avenue, S.E., (Parcels 208/4, 208/61, 208/64, 208/65, and 215/27).

**HEARING DATE:** November 18, 2008  
**DECISION DATE:** November 18, 2008  
**DATE OF DECISION**  
**ON RECONSIDERATION:** July 28, 2009

**DECISION ON RECONSIDERATION**

On July 2, 2009, Julius Fleischman, party-opponent to this application, filed a timely motion for reconsideration of Board of Zoning Adjustment Order No. 17837, of Hillcrest Homes, issued on June 23, 2009. Exhibit No. 57. ANC 7B, which was automatically a party to this application, and had also opposed it, filed its own timely motion for reconsideration of Order No. 17837 on July 6, 2009. Exhibit No. 58.

The Board addressed each motion at a public meeting on July 28, 2009, and deliberated on the issues raised by the movants. After deliberating, the Board decided to deny both motions, in each case by a vote of 3-0-2.

**Motion of party-opponent**

The motion for reconsideration of the party-opponent re-hashes the arguments made at the hearing. The party-opponent has alleged, throughout the proceedings in this case, that the application failed to meet the three prongs of the variance test. The Board heard, and has now twice considered, his arguments, but does not agree with his conclusions. The motion for reconsideration does not allege that any specific finding of fact or conclusion in the order is erroneous. Instead, it re-states the party-opponent's disagreement with the Board's findings and determinations. These findings and determinations, however, are reasonable and based on substantial evidence in the record. Therefore, notwithstanding the party-opponent's disagreement with them, the Board declines to reconsider its decision to grant the application.

**Motion of ANC 7B**

ANC 7B's motion for reconsideration, like the party-opponent's, re-states arguments already considered by the Board, but also alleges several procedural deficiencies in the Board's handling

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of the hearing, the Office of Planning's ("OP") presentation, and the notice given the ANC. As to the latter, the ANC claims that it was not afforded the required 10 days (plus three days for service by mail) to move for reconsideration. 11 DCMR §§ 3126.2 & 3110.3. The allegation is erroneous, as the ANC's motion was filed on the 13<sup>th</sup> day after issuance of Order No. 17837, and was considered timely, and acted upon, by the Board.

The ANC further claimed that one Board member, Mr. Jeffries, was inappropriately "familiar" with the attorney for the Applicant, sarcastic to the ANC, and bullying to other Board members. The Board is at a loss as to why the ANC makes these allegations. After a thorough re-review of the hearing transcript, no evidence of inappropriate familiarity, sarcasm to the ANC, or bullying can be found.

Mr. Jeffries took a prominent role in the proceedings in this case. He asked many questions and tried to help focus the cross-examination of witnesses. But, he did not show favoritism, bias, or "inappropriate familiarity" with anyone, particularly not with the Applicant's attorney, as alleged by the ANC. At one point during the hearing, Mr. Jeffries quipped "I love Mr. Harps," referring to the appraiser who testified for the Applicant as an expert in real estate valuation. November 18, 2008 Hearing Transcript ("Trans.") at 119, lines 14-15. But Mr. Jeffries' statement was made in the context of his pointed questions to the Applicant as to why it was proffering a valuation expert at all. Mr. Jeffries later explained that Mr. Harps is a "world class appraiser." (Trans. at 326, line 12). His first statement was a general statement of approbation as to Mr. Harps' expertise, not as to his conclusions in this case.

Nor was Mr. Jeffries sarcastic to the ANC. On the contrary, he went to some lengths to help the Chair determine whether the ANC's written submission could be given great weight. Trans., generally, at 277-284. He stated twice, neither time sarcastically, that he was interested in hearing the ANC's testimony. Trans. at 176, lines 11-13 & at 220, lines 15-16. At one point during the hearing, Mr. Jeffries engaged the ANC representative in a colloquy, trying to explain to her that the ANC had to "show more" to make its case in opposition, and that he, Mr. Jeffries, did not feel that it had yet done so. Trans. at 320-334. These were honest statements expressing Mr. Jeffries' opinion and offered as guidance to help direct the ANC's case. They were not delivered in a sarcastic or derogatory tone or manner.

There is no evidence of "bullying" of other Board members in the transcript either. Instead, the transcript shows that Mr. Jeffries worked with the other Board members to ensure proper conduct of cross-examination, (*see, e.g.*, Trans. at 192, lines 19-22 & 193, lines 1-9) and to move the case along as the time was getting late, (*see, e.g.*, Trans. at 294-296 & at 456, lines 6-13). The allegation of "bullying" not only does a disservice to Mr. Jeffries, but to the other Board members as well, who are fully able to address and/or stand up to, potentially bullying behavior. Even when read with a view to finding inappropriate behavior by Mr. Jeffries, the transcript demonstrates none. On the contrary, Mr. Jeffries' active role in the hearing helped move the case along and focus the issues. Throughout the hearing, he engaged in dialogue with the Applicant, the opposition, the ANC, and other Board members, none of which was discourteous

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or inappropriate. Although the ANC may be unhappy with the outcome of the case,<sup>1</sup> a fair assessment of Mr. Jeffries' behavior shows nothing on which to base a reconsideration of the Board's decision to grant the application.

Lastly, the ANC claimed that the representative from the Office of Planning was inexperienced and was not permitted (by his OP colleague, not by the Board) to explain OP's decision to support the application. The record supports neither of these assertions. In fact, a review of the portion of the transcript in which the OP representatives testified and answered cross-examination questions shows that both OP representatives thoughtfully explained OP's decision to support the application. *See*, Trans. at 221-274. Nor is either of these assertions germane to whether the Board's decision was based on substantial evidence in the record and not clearly erroneous as a matter of law. The ANC also claimed that the OP representative did not represent the community's opinion. It is not, however, OP's purpose to reflect the community's opinion, but to provide expert planning advice to the Board. As required by statute, the Board gave great weight to the Office of Planning's advice and nothing in the record suggests that the Board could or should have done otherwise.

For all the reasons stated above, it is **ORDERED** that the motions for reconsideration filed by both the party-opponent, Mr. Fleischman, and by ANC 7B, are hereby **DENIED**.

**VOTE ON RECONSIDERATION  
MOTION OF**

**PARTY-OPPONENT:**                      **3-0-2**                      (Marc D. Loud, Shane L. Dettman, Michael G. Turnbull, to deny. Two seats vacant, so two members not participating or voting.)

**VOTE ON RECONSIDERATION  
MOTION OF ANC 7B:**

**3-0-2**                      (Marc D. Loud, Shane L. Dettman, Michael G. Turnbull, to deny. Two seats vacant, so two members not participating or 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: NOVEMBER 20, 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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<sup>1</sup>An unhappiness that Mr. Jeffries sincerely tried to assuage by addressing the community directly just before the vote on the application – *see*, Trans. at 457-459.

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

**Application No. 17893 of Antonio Seleme**, pursuant to 11 DCMR § 3103.2, for a variance from the height limitations under § 2500.4 to allow the construction of a three-car accessory garage with second-floor artist studio in the R-2 district at premises 3830 Legation Street, N.W. (Square 1857, Lot 62).<sup>1</sup>

**HEARING DATES:** March 24 and June 16, 2009

**DECISION DATE:** June 16, 2009

**DECISION AND ORDER**

This application was submitted September 30, 2008 by Antonio Seleme (“Applicant”), the owner of the property that is the subject of the application. The application, as finally amended, requested an area variance from the limitations on height under § 2500.4 to allow construction of a three-car accessory garage with second-floor artist studio in the R-2 district at 3830 Legation Street, N.W. (Square 1857, Lot 62). Following a public hearing, the Board voted 3-0-2 on June 16, 2009 to deny the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Public Hearing. By memoranda dated October 16, 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 3; Advisory Neighborhood Commission (“ANC”) 3/4G, the ANC for the area within which the subject property is located; and the single-member district ANC 3G06.

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 3/4G. Notice was published in the D.C. Register on January 9, 2009 (56 DCR 264). The Applicant requested a postponement, and the hearing was continued to and completed on June 16, 2009.

Requests for Party Status. In addition to the Applicant, ANC 3/4G was automatically a party in this proceeding. The Board granted an application for party status in opposition to the application from Bernard Ries and Barbara Ries, who live next-door to the subject property.

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<sup>1</sup> This case was advertised as an application for an area variance from the height limitations under § 2500.4 and a use variance from § 2500.5 to allow the construction of the planned three-car accessory garage with second-floor artist studio. The advertisement was consistent with a letter to the Applicant from the Office of the Zoning Administrator, dated July 2, 2008, which gave the Applicant notice that the construction of a two-story garage at the subject property was in violation of §§ 2500.4 and 2500.5. The Applicant was permitted to amend the application so as to seek only an area variance to allow the additional height of the planned garage following a determination by the Board at the public hearing that no use variance was required because, pursuant to § 2300.3, an artist studio may be located in an accessory garage as a matter of right in the R-2 zone.

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Government Reports. By report dated June 9, 2009 and through testimony at the public hearing, the Office of Planning recommended denial of the application.<sup>2</sup> According to OP, the application did not demonstrate that the proposal met the required tests for variance relief and could be granted without causing substantial detriment to the public good or substantially impairing the intent, purpose, and integrity of the zone plan. The Office of Planning noted that the “lot may present some uniqueness as a result of its topography and the location of the two drains,” but concluded that “the uniqueness of the property does not result in a peculiar or exceptional practical difficulty” because the Applicant had not indicated how the topography or the outdoor drains required the proposed additional height on the garage, or why the Applicant could not build an addition on to the residence to use as a dance studio.

ANC Report. By letter dated February 18, 2009, ANC 3/4G indicated that the ANC had agreed to oppose the application by a vote of 6-0 at a public meeting on February 9, 2009 with a quorum present. The ANC’s opposition was based on findings including that the Applicant had begun construction of the garage before obtaining a building permit; construction of a two-story garage, 16 feet in height, was not consistent with the plans that had been submitted to DCRA, which depicted a one-story garage, 13 feet in height; and neighbors spoke unanimously in opposition to the variances at the ANC meeting, citing interference with sight lines and reduced light to their properties.

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

1. The subject property is a rectangular parcel located on the south side of Legation Street, NW (Square 1857, Lot 62). The lot is approximately 37.5 feet wide and 150 feet deep, with an area of 5,625 square feet.
2. The lot is somewhat bowl-shaped, with a depression in the center of the property. The rear yard dips in the middle of the lot at more than four feet lower than the height of the house or the alley at either end of the property. The depressed sections are prone to

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<sup>2</sup> In its report, the Office of Planning noted that the Zoning Administrator had “determined that relief is required from § 2500.5 to permit the use of the second floor of the detached garage for other than living quarters for domestic employees,” but indicated its belief that a use variance from § 300.3, and not § 2500.5, might be appropriate because the Applicant’s proposed use of the second floor, a dance studio, was not listed among the permitted uses in the R-2 zone. With regard to a contention by the Applicant that the second floor of the garage could be used as a dance studio pursuant to the home occupation provisions of the Zoning Regulations, OP noted that those provisions, set forth in § 203, do not permit home occupations in accessory buildings. OP also noted that an “artist studio” could be located in an accessory building, but concluded that “a commercial dance studio would not appear to meet the criteria.” Based on the Applicant’s testimony at the public hearing, the Board determined that the Applicant’s proposed use of the second floor of the garage would not constitute a “commercial dance studio” but an “artist studio” as defined in the Zoning Regulations. As previously noted, an artist studio may be located in an accessory garage as a matter of right in the R-2 zone, and therefore no variance from § 300.3 was required.

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flooding, despite the presence of two drains in the rear yard.

3. A public alley, 15 feet wide, abuts the property along the rear lot line.
4. The subject property is improved with a two-story, one-family detached house built in 1950. A one-story accessory garage, previously located in the rear yard and accessible from the alley, was accidentally destroyed some years ago.
5. Properties in the vicinity of the subject property are improved with one-family detached or semi-detached dwellings. Some of the residences have one-story detached garages or sheds within their rear yards.

**The Applicant's Project**

6. On September 27, 2007, the Department of Consumer and Regulatory Affairs ("DCRA") issued Building Permit No. 111705 to the Applicant for the construction of a detached one-story garage. A stop-work order was posted on the property on October 17, 2007 after a DCRA inspector found that the Applicant had nearly completed construction of a two-story garage on the lot. Another stop-work order was posted on April 25, 2008 because the Applicant continued to construct a two-story garage beyond the scope of the building permit.
7. By letter to the Applicant dated July 2, 2008, the Office of the Zoning Administrator at DCRA gave notice that "construction of a two story garage in the rear of 3830 Legation Pl, NW violates the Zoning Regulations, specifically 11 DCMR §§ 2500.4 and 2500.5."<sup>3</sup> The Zoning Administrator recommended that the Applicant remove the garage, show a proposal to bring the structure into compliance with the Zoning Regulations, or obtain a variance from the Board.

**Zone Plan**

8. The subject property is located in the R-2 zone 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.
9. An accessory building in the R-2 zone may not exceed one story or 15 feet in height. 11 DCMR § 2500.4.

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<sup>3</sup> Those sections state that "An accessory building in any zone district shall not exceed one (1) story or fifteen feet (15 ft.) in height, except as provided in § 2500.5," 11 DCMR § 2500.4; and "In an R-1-A or R-1-B District only, an accessory private garage may have a second story used for sleeping or living quarters of domestic employees of the family occupying the main building." 11 DCMR § 2500.5.

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10. An artist studio is a permitted use in a private garage that is an accessory building in the R-2 zone, subject to certain requirements. 11 DCMR § 2300.3. The definition of “artist studio” for zoning purposes encompasses “a place of work of one or more persons who are engaged actively, and either gainfully or as a vocation in ... the performing and visual arts, including but not limited to, dance [and] choreography....” 11 DCMR § 199.

**CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks an area variance from the height limits of 15 feet and one story applicable to accessory buildings under § 2500.4 to allow the construction of an accessory garage 16.5 feet and two stories in height in the R-2 district at premises 3830 Legation Street, NW (Square 1857, Lot 62). 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.

Normally a variance request comes before the Board in the form of proposed plans to build a structure. In this instance, the structure has been constructed in a manner different from the matter of right plans submitted to DCRA. The Board must therefore view the as-built structure as representing a proposed set of plans, but will adjudge the impact of the proposal based upon the appearance and effect of the structure as built.

The Board concludes that the subject property faces an exceptional situation or condition related to its bowl-shaped topography. The sloping nature of the rear yard creates drainage issues and limits the area of the lot that is level. However, the Board does not find that the strict application of the Zoning Regulations to the subject property would result in practical difficulties to the owner. Although the topography of the lot is unusual, the property can be developed – and in the past, has been developed – in a manner permitted as a matter of right in the R-2 zone district, with a house fronting the street and a one-story accessory building located in the rear yard. The Board was not persuaded that the changes in elevation present on the property created the need for a second story on the accessory building. Although the Zoning Regulations do not guarantee that any particular matter of right use may be established, in this instance a one-story accessory building could have accommodated an artist’s studio had the entire ground floor not been devoted to parking spaces.

The Board also concludes that the requested variance cannot be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. Accessory buildings with heights in excess of 15 feet or one story are

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disfavored by the Zoning Regulations, which impose those height limits in all zones with one narrow exception applicable only in the R-1-A and R-1-B districts.<sup>4</sup>

Relief cannot be granted in this case without substantial detriment to the public good. The Board agrees with the testimony from the Office of Planning, ANC 3/4G, the party in opposition, and persons in opposition that the requested variance could not be granted without substantial detriment to the public good in light of the large size of the Applicant's accessory building, which was not consistent with the character of the neighborhood, blocked views from other residences, created potential adverse impacts on light and air to neighboring properties, and is out of proportion to other accessory buildings in the vicinity.

The Board is required to give "great weight" to any issues and concerns raised by ANC 3/4G in this proceeding. The ANC opposed the application, citing objections to the project from neighborhood residents as well as concerns related to the building permit process. Although issues and concerns related to the building permit process are not within the Board's jurisdiction, the Board has found the ANC's expressed concerns over the adverse impacts of the structure to be persuasive.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and consideration to the issues and concerns raised by ANC 3/4G, the Board concludes that the Applicant has not satisfied the requirements for an area variance from the height limits of 15 feet and one story applicable to accessory buildings under § 2500.4 to allow the construction of an accessory garage 16.5 feet and two stories in height in the R-2 district at premises 3830 Legation Street, N.W. (Square 1857, Lot 62). Accordingly, it is hereby **ORDERED** that the application is **DENIED**.

**VOTE: 3-0-2** (Marc D. Loud, Shane L. Dettman, and Michael G. Turnbull to **DENY**; two Board members (vacant) not participating)

**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: NOVEMBER 20, 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.

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<sup>4</sup> In an R-1-A or R-1-B district only, an accessory private garage may have a second story used for sleeping or living quarters of domestic employees of the family occupying the main building. *See* 11 DCMR § 2500.5.

**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 4<sup>th</sup> Street, N.W. (Square 519, Lot 54).<sup>1</sup>

**HEARING DATE:** July 28, 2009

**DECISION DATES:** October 6 and 27, 2009

**CORRECTED SUMMARY ORDER**<sup>2</sup>

**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.<sup>3</sup> (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).

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<sup>1</sup> 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).

<sup>2</sup> The order was revised to correct the Square number from 516 to 519.

<sup>3</sup> 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.

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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.<sup>4</sup> 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.

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<sup>4</sup> Neither Ms. Maxwell nor Mr. Grumbine requested or were granted party status.

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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. 17984 of Tudor Place Foundation, Inc**, pursuant to 11 DCMR § 3104.1, for a special exception to allow the continued operation of a museum under section 217, in the R-1-B District at premises 1605 32<sup>nd</sup> Street, N.W., and 1644 31<sup>st</sup> Street, N.W. (Square 1281, Lot 835).

**HEARING DATE:** November 10, 2009

**DECISION DATE:** November 10, 2009 (Bench Decision)

**SUMMARY ORDER**

**SELF CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5)

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (ANC) 2E and to owners of property within 200 feet of the site. Pursuant to 11 DCMR § 217.5, the Board provided proper and timely notice to the Historic Preservation Review Board. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. ANC 2E filed a report, dated October 2, 2009, recommending approval of the application. The ANC's report was filed on a timely basis and met the requirements of section 3115.1 of the Zoning Regulations. (Exhibit 29). The Office of Planning (OP) submitted a timely report recommending conditional approval of the application. (Exhibit 34). The District Department of Transportation (DDOT) recommended conditional approval of the application.<sup>1</sup> (Exhibit 35). The subject property is both a local and national historic landmark as well as being located in the Georgetown Historic District. According to the OP report, the D.C. Historic Preservation Office has no objections to the application. (Exhibit 34). The record also contains letters of support from Councilmember Evans (Exhibit 36) as well as three neighbors. (Exhibits 28, 30, and 32).

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<sup>1</sup> Although the DDOT report was filed one day late, the Board accepted it into the record. In its report DDOT indicated that it wanted more information related to intermodal transportation split. The Applicant's transportation consultant, who was qualified as an expert, gave testimony and provided that additional transportation information. (Exhibit 38).

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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 section 217. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 217, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map.<sup>2</sup> The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

For the purposes of these conditions, the definition of “special event” is any single function or program on the subject property at which 50 or more attendees are expected. The definition of “special event” does not include any regularly scheduled tours of the subject property occurring during the hours of 9:00 a.m. and 4:30 p.m., Monday through Saturday, and between 12:00 noon and 4:30 p.m. Sunday, including group tours for 50 or more attendees. The term “attendee” excludes individuals under the age of 16.

Also for purposes of these conditions, the number of attendees of any use of Dower House (excluding the number of the Applicant’s staff whose offices are located in Dower House) shall be added to the number of attendees of any use of the main house taking place at the same time, in order to determine whether the total number of attendees reaches the threshold number at which valet parking and/or shuttle bus service must be provided as set forth in Conditions 8(b) and 8(c). If such threshold number is reached, Conditions 8(b) and 8(c) must be implemented, regardless of whether or not a “special event” is involved.

1. The Applicant shall convene a Liaison Committee, to include two representatives of the Tudor Place Foundation, two representatives of ANC 2E, and two representatives of the community at large. The Applicant shall convene the Liaison Committee semi-annually. The Liaison Committee shall address any issues that arise relating to the operations of Tudor Place. Not less than 30 days

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<sup>2</sup> The Applicant sought not only to continue the use at the subject property but also to modify several of the existing conditions and to clarify the number of attendees at events. The Board, citing the ANC’s support of the application, as submitted, as well as the supporting letters from neighbors, including the neighbor across the street, approved the relief requested by the Applicant, including removing a condition limiting the use to a term.

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- in advance of Liaison Committee meetings, notice of such meetings shall be (i) posted on the subject property, (ii) mailed or delivered to all households within 200 feet of the subject property, and (iii) published on the Applicant's website.
2. The number of regularly scheduled tours shall not exceed 10 per day. Non-group tours shall be limited to a maximum of 20 persons. Admission for group tours shall be by appointment only.
  3. The hours of operation for tours shall be limited to between 9:00 a.m. and 4:30 p.m., Monday through Saturday, and between 12:00 noon and 4:30 p.m. on Sunday. In addition, tours shall be permitted between 5:30 p.m. and 8:30 p.m. on Mondays, Tuesdays, or Wednesdays, but not more than one day per week. To the extent such evening tours are offered, they shall take place on the same day of each week, which day shall initially be determined by the Applicant, with any changes to be made in consultation with the Liaison Committee.
  4. The Applicant shall instruct the drivers of all buses and vans, which pick up and/or drop off passengers at the subject property, not to idle the engines of their vehicles longer than is necessary to allow passengers to embark or disembark. Buses bringing passengers to the subject property shall park in legal bus parking areas within the District of Columbia. There shall be no bus parking on the subject property.
  5. Special events at the subject property shall be limited to a maximum of 500 attendees at any one event.
  6. The number of special events involving 200 to 500 attendees at the subject property shall be limited to 6 per year, with no more than one such event taking place at the property in any one calendar month. The number of special events involving 100 to 199 attendees shall be limited to 10 per year, and those involving 50 to 99 attendees shall be limited to 15 per year. In no event, shall functions or special events for the purpose of weddings and/or wedding receptions be permitted for more than 75 attendees.
  7. All functions, including special events, taking place at the main house, shall end no later than 10:30 p.m. All functions taking place at Dower House shall end no later than 10:00 p.m.
  8. The Applicant shall minimize traffic and noise impacts by employing the following measures:
    - a) (i) Provide advance information to attendees of regularly scheduled tours regarding parking, (ii) Provide advance information to attendees of special events regarding applicable parking policies as set forth in these Conditions, (iii) Provide advance information to bus companies and bus drivers of scheduled group tours, regarding parking/idling policies as set

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- forth in these Conditions, (iv) Provide monitoring and oversight of visitor arrival modes and parking patterns, (v) Hold semi-annual discussions with ANC-2E and the Liaison Committee to review parking and traffic issues and concerns, and take appropriate corrective measures, as necessary; (vi) Provide notification to, and coordinate with, other area institutions to avoid scheduling of simultaneous special events; and (vii) Maximize the use of the rear entrance to the subject property on 32<sup>nd</sup> Street for service and related functions.
- b) For Special Events Involving 75 to 200 Persons: (i) Provide valet parking service using satellite lots for parking and using the Chevy Chase Bank lot (at Wisconsin Avenue and Q Street) for stacking of vehicles as necessary during peak arrival times (with the Tudor Place driveway serving as a backup location if necessary); (ii) Provide reasonable prior notice to ANC 2E regarding events for monitoring and feedback; and (iii) Request from appropriate authorities emergency parking restriction within a 4 to 6 vehicle space area adjacent to the 31<sup>st</sup> Street entrance to the main house.
- c) For Special Events Involving More than 200 Persons: Same measures as in Paragraph b, except that instead of items (i) and (iii) described in Paragraph b, provide attendees with advance instructions to bring vehicles directly to a satellite parking location from which the Applicant will arrange for shuttle bus service to the subject property and (ii) The Applicant will arrange for one or two uniformed personnel to help direct traffic and parking during the event.
9. The Applicant shall notify affected area residents not less than 60 days in advance of any scheduled special events of 75 or more attendees by mailing or delivering a calendar of such events to all households within 200 feet of the subject property.
10. The Applicant shall appoint a staff member as a community liaison person who will be responsible for addressing any issues and concerns raised by neighbors with respect to the usual day-to-day operation of the subject property.
11. For each special event, the Applicant shall designate a "Tudor Place Duty Officer" to be in charge of that special event. The Tudor Place Duty Officer will be responsible for addressing any issues and concerns raised by neighbors with respect to that special event and for handling any problems that may arise during the course of that special event. The staff member appointed as a community liaison person pursuant to Condition No. 10 may also serve as the Tudor Place Duty Officer for a particular event.
12. No amplified music or amplified voices shall be permitted on the grounds of the subject property, including during any outdoor function or special event. During an indoor function or special event, amplified music or voices are permitted

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- indoors with all doors and windows closed. The Applicant shall adhere to the District of Columbia noise regulations.
13. Following a function or special event at the main house that ends at 10:30 p.m., or a function at Dower House that ends at 10:00 p.m., there shall be no noisy clean-up that night. All noisy clean-up shall be done the next morning, but not commencing earlier than 7:30 a.m.
14. In addition to matter-of-right uses, Dower House may be used for purposes accessory to the nonprofit museum use of Tudor Place. These uses shall be limited to:
- 1) A location for the following functions and programs involving not more than 49 people: (a) administrative functions (including Board of Trustees' meetings, volunteer meetings, etc.), (b) educational programs (lectures, workshops, etc.), (c) small fundraising functions, including donor cultivation activities involving the heating and serving of food, but not involving heavy cooking, (d) collections storage; and
  - 2) A location for offices for not more than 9 members of the Tudor Place staff who do not utilize on-street parking.

**VOTE:** **4-0-1** (Marc D. Loud, Meridith H. Moldenhauer, Shane L. Dettman, Anthony J. Hood to APPROVE. No other Board members present, 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 20, 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.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE

BZA APPLICATION NO. 17984

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GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS 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. 17990 of Gregory Muehl and Tracy J. Haugen**, pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear addition to an existing one-family detached dwelling under section 223, not meeting the side yard requirements (section 405), in the R-1-B District at premises 5019 41<sup>st</sup> Street, N.W. (Square 1756, Lot 12).

**HEARING DATE:** November 10, 2009

**DECISION DATE:** November 10, 2009

**SUMMARY ORDER**

**SELF-CERTIFIED**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3E, which is automatically a party to this application. ANC 3E submitted a report in support of the application. The Office of Planning (OP) also 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 § 3104.1, for a special exception under section 223. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 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 application, pursuant to Exhibit No. 8, revised by Exhibit No. 21 (plans and elevations) be **GRANTED**.

**VOTE:**       **4-0-1** (Marc D. Loud, Anthony J. Hood, Shane L. Dettman, and Meridith H. Moldenhauer to APPROVE; one Mayoral appointee (vacant) not participating)

**BZA APPLICATION NO. 17990**  
**PAGE NO. 2**

**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 18, 2009**

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

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

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

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.

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

**Application No. 17994 of Theodore Houseknecht and Kuk-Ja Kim**, pursuant to 11 DCMR § 3103.2, for a variance from the lot width requirements under subsection 401.3, a variance from the lot occupancy requirements under subsection 403.2, a variance from the accessory building height and stories requirements under subsection 2500.4, and a variance from the alley set back from centerline requirements under subsection 2300.4, for a second story addition to an existing garage in the R-4 District at premises 1336 T Street, N.W. (Square 238, Lot 823).<sup>1</sup>

**HEARING DATE:** November 17, 2009

**DECISION DATE:** November 17, 2009 (Bench Decision)

**SUMMARY ORDER**

**SELF CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 4 and 24).

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 filed a report, dated June 12, 2009, recommending approval of the application. The ANC's report was filed on a timely basis and met the requirements of section 3115.1 of the Zoning Regulations. (Exhibit 16). The Office of Planning (OP) submitted a timely report in which it stated that it could not recommend approval of two of the requested area variances (from maximum lot occupancy under subsection 403.2 or from maximum height for accessory structures under section 2500.4), while noting that it did not have an objection to several requests for relief, such as from lot width (§ 401.3) or the alley set back (§ 2300.2).<sup>2</sup> (Exhibit 28). The record contains letters of support from 8 neighbors. (Exhibits 21-23, 26, 27, 29, 30, and 31).

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<sup>1</sup> The Applicant submitted an amended application and self-certification. (Exhibit 24).

<sup>2</sup> OP's report indicated that the Applicant amended the application by withdrawing the relief originally requested from §§ 404, 2001.3, and 2300.4. OP indicated that it did not believe that the Applicant could meet the first or second prong of the variance test with regard to two of the area variances requested.

BZA APPLICATION NO. 17994

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 a variance from the lot width requirements under subsection 401.3, a variance from the lot occupancy requirements under subsection 403.2, a variance from the accessory building height and stories requirements under subsection 2500.4, and a variance from the alley set back from centerline requirements under subsection 2300.4. Based upon the record before the Board and having given great weight to the OP<sup>3</sup> and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 401.3, 403.2, 2300.4, and 2500.4, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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 (pursuant to Exhibit 7 – Plans)**.

**VOTE:**       **4-0-1** (Meridith H. Moldenhauer, Michael G. Turnbull, Shane L. Dettman, and Marc D. Loud, to APPROVE. One Board member (vacant) not present, nor 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 20, 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

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<sup>3</sup> While the Board gave great weight to the OP report and testimony, the Board was not persuaded by OP's conclusions and ultimately granted the variance relief requested. Based on the record, the Board found that the Applicant made out a case and established the elements for variance relief.

BZA APPLICATION NO. 17994

PAGE NO. 3

CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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. 17995 of Suzanne George and Nathan Tibbits**, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a two story (plus basement) rear addition to an existing one-family detached dwelling under section 223, not meeting the rear yard (section 404) requirements, in the R-1-B District at premises 5325 38<sup>th</sup> Street, N.W. (Square 1872, Lot 812).

**HEARING DATE:** November 10, 2009

**DECISION DATE:** November 10, 2009

**SUMMARY ORDER**

**SELF-CERTIFIED**

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

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) 3G and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3G, which is automatically a party to this application. ANC 3G submitted a report in support of the application. The Office of Planning (OP) also 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 § 3104.1, for a special exception under section 223. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 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 application, pursuant to Exhibit No. 10, as revised by Exhibit No. 23 (plans), be **GRANTED**.

**VOTE:**       **4-0-1** (Marc D. Loud, Shane L. Dettman, Meridith H. Moldenhauer, and Anthony J. Hood to APPROVE; one Mayoral appointee (vacant) not participating)

**BZA APPLICATION NO. 17995**  
**PAGE NO. 2**

**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 18, 2009**

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

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

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

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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**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION CORRECTED<sup>1</sup> ORDER NO. 08-27A  
Z.C. Case No. 08-27**

**Consolidated Planned Unit Development and Related Amendment to the Zoning Map  
American Institute of Architects and American Architectural Foundation  
(Square 170, Lots 38 & 39)  
June 22, 2009**

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

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

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

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

**FINDINGS OF FACT**

**Procedural Background**

1. On October 3, 2008, the Office of Zoning received an application from the Applicant requesting the Commission to approve a consolidated PUD and related Zoning Map amendment from the SP-2 to the C-3-C Zone District, with premises address of 1735 and 1799 New York Avenue, N.W., Lots 38 and 39 in Square 170 (the "Property").

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<sup>1</sup> On November 9, 2009, the Commission granted the Applicant's request for a technical correction to Z.C. Order No. 08-27 ("Original Order") as published in the July 17, 2009 edition of the *D.C. Register*. The Applicant asked that the Commission modify the second bullet item of paragraph number 8 in the Findings of Facts section of the Order, to change the word "immediately" to "one block". Except for necessary conforming revisions, no other changes have been made to the Original Order.

**Z.C. CORRECTED ORDER NO. 08-27A****Z.C. CASE NO. 08-27****PAGE 2**

2. On November 10, 2008, the Commission considered the Consolidated PUD and Zoning Map Amendment application and voted to set the case down for a public hearing. On March 13, 2009, the Applicant filed its pre-hearing statement with the Office of Zoning and a public hearing was scheduled before the Commission for May 18, 2009. Notice of the public hearing was given in accordance with the provisions of 11 DCMR §§ 3014 and 3015.
3. By a letter dated April 17, 2009, and received by the Office of Zoning on April 20, 2009, the West End Citizens Association (“WECA”) requested to participate as a party in the proceeding.
4. On May 18, 2009 the Commission held a public hearing on the application, which was conducted in accordance with the provisions of 11 DCMR § 3022. Paul Tummonds of Pillsbury Winthrop Shaw Pittman, LLP and Christine McEntee, Executive Vice President and Chief Executive Officer of the AIA presented the case on behalf of the Applicant. As a preliminary matter, the Commission accepted the Applicant’s architect, Marnique Heath of Studios Architecture, as an expert in architecture and considered the party status application of WECA. The Applicant had no objection to the granting of party status to WECA. WECA was granted party status by the Commission. Eric Malinen of ANC 2A testified on behalf of Advisory Neighborhood Commission (“ANC”) 2A. Barbara Kahlow testified on behalf of WECA.

**PUD SITE**

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

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- GOV zoned property to the east;
- One block to the north is C-3-C zoned property;
- Immediately south of the Property across New York Avenue is SP-2;
- Immediately west of the Property across 18<sup>th</sup> Street is GOV.

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

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

### **PUD APPLICATION AND PROJECT**

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

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Ms. McEntee noted that this project provides the AIA with the opportunity to demonstrate its commitment to its public policies and to demonstrate its leadership in the areas of sustainability and energy reduction, integrated project delivery and diversity. Ms. McEntee noted that AIA's Board has mandated that it have diversity in the design and construction teams working on this project, such that 15% of fees and construction dollars are awarded to minority-owned firms, 15% to women owned firms, and 15% to small and emerging firms. Ms. McEntee noted that the Applicant is well on its way to satisfying those mandates. Ms. McEntee also noted that one of the key design characteristics of the original design of the AIA headquarters office building is the harmony the modern building achieves with the Octagon House. The proposed renovations of the headquarters office building are intended to have no adverse impact on the building's eligibility for historic recognition in the future. Ms. McEntee noted that the Applicant has met with the District's State Historic Preservation Officer and staff members of the Commission of Fine Arts on numerous occasions to review the project and no objections have been made by either of these entities.

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

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green roof will be visible from within the building and the plaza. (Exhibit 12, pp. 7-8, Exhibit A.)

15. The sustainable design elements of the project will also extend to the plaza between the two buildings. The project will retain existing trees, incorporate recycled brick throughout the plaza, and include a bioretention cell in the landscape plan. At the request of the Commission, the Applicant submitted a modified landscape plan that included enhancements to the area of the Plaza adjacent to the Octagon House. (Exhibit 12, pp. 8-9, Exhibit A, p. ZA.03 and Exhibit 30, Exhibit A.)
16. The proposed project will include retail uses and multi-purpose spaces accessible directly from the plaza. The multi-purpose room will have direct access to the plaza area. The Applicant intends to lease the multi-purpose spaces to outside groups and organizations for meetings, receptions and events. The proposed bookstore use will draw pedestrians from 18<sup>th</sup> Street and New York Avenue into the plaza, and patrons may enter the bookstore directly from the plaza. Access to the plaza will not be limited at any time of the day or night. The Applicant anticipates that the book store will be open from the hours of 9:00 AM to 5:00 PM. (Exhibit 12, pp. 8-9.)
17. The Applicant and its representatives noted that the current SP-2 zoning for the Property does not allow the proposed use of the multi-purpose space as a matter-of-right and that such use could only be approved by the BZA through the granting of a use variance. The Applicant also noted that the proposed direct entrance to the retail uses, visibility of the retail uses from the sidewalk adjacent to the Property, and signage for the retail uses that was visible from the adjacent sidewalk are not permitted in the SP-2 Zone District.
18. Pursuant to 11 DCMR § 2405.7, the Commission has the authority to grant flexibility from the Zoning Regulations in connection with a PUD. The Applicant requested relief from the restriction on additions to non-conforming roof structures (§ 2001.3), from the single roof structure requirement (§ 411), and from the roof structure set back requirement and height limitation (§§ 411 and 770.6). The Commission finds that granting this requested flexibility is necessary for the project to achieve its significant sustainability goals, that the impact of granting this flexibility is acceptable given the quality of public benefits in the project.

#### **SATISFACTION OF THE PUD EVALUATION STANDARDS**

19. Pursuant to 11 DCMR § 2403, in evaluating a PUD application the Commission must “judge, balance, and reconcile the relative value of Project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” (11 DCMR § 2403.8.) The Commission finds that the related rezoning, development incentives and requested flexibility from the Zoning Regulations are appropriate and are justified by the benefits and amenities offered by this Project. As

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detailed in the Applicant's written submissions and testimony to the Zoning Commission, the proposed PUD will provide the following Project amenities and public benefits:

- Urban Design, Architecture, and Creation of Open Space: Section 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. By combining sustainable design with the appropriate treatment of a potentially historic structure, this project embraces truly exemplary design. The public plaza between the Octagon House and the headquarters building will be a signature component of the project and will create a neighborhood destination and gathering spot that is otherwise unavailable in the immediate vicinity. Although the exterior of the building will remain largely unchanged, the Commission agrees that the renovated building respects the design and scale of the surrounding buildings. (Exhibit 12, p. 14.)
- Site Planning, and Efficient and Economical Land Uses: Pursuant to § 2403.9(b) of the Zoning Regulations, "site planning, and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Zoning Commission. Given the Subject Property's location in the downtown core, it is appropriate to have high density commercial uses as proposed in this PUD project. The creation of an enhanced, large public plaza (accessible from both 18<sup>th</sup> Street and New York Avenue) creates a respite for neighborhood denizens seeking a retreat in an area otherwise very dense with large office buildings and lacking in similar outdoor spaces. (Exhibit 12, pp. 14-15.)
- Environmental Benefits: According to § 2403.9(h), "Environmental benefits, such as (1) storm water runoff controls in excess of those required by Stormwater Management Regulations, (2) Use of natural design techniques that store, infiltrate, evaporate, treat, and detain runoff in close proximity to where the runoff is generated, and (3) Preservation of open space or trees" are deemed to be public benefits and project amenities. As a sustainable project seeking LEED Platinum certification, the renovated headquarters building will include an extensive stormwater management program that includes a bioretention cell in the redesigned plaza for stormwater collection and reuse on site. The green building materials, the cool and green roof systems, the use of natural ventilation to reduce the building's reliance on its cooling system, the low energy lighting scheme, the limited-use water system, the goal of achieving carbon neutrality by 2030, and the many other environmentally-friendly elements of the building's design are public benefits and project amenities. (Exhibit 12, p. 15.)
- Historic Preservation: Pursuant to § 2403.9(d), "historic preservation of private or public structures, places or parks" is a public benefit and/project amenity. The headquarters building represents a period of architectural significance (Mid 20<sup>th</sup> Century Modernism) that is held in high regard in the District of Columbia and has drawn the attention of the District's historic preservation community. Indeed, as the national headquarters for the AIA, the headquarters building holds a particular

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prominence among architects, and it is a noteworthy building held in high esteem among preservationists in the District. (Exhibit 12, pp. 15-16.)

- Effective and Safe Vehicular and Pedestrian Access: The Zoning Regulations, pursuant to § 2403.9(c), state that effective and safe vehicular and pedestrian access, and transportation management measures can be considered public benefits and project amenities. The proposed project does not propose any modifications to the existing vehicular and loading entrances or the number of parking spaces. The pedestrian experience with cars and trucks accessing the parking garage and loading berths will remain the same as it has been since the headquarters building was constructed in 1973 and will not create any new conflicts that could prove problematic. In addition, the project includes bicycle parking spaces on site and showers for building tenants in the lower level of the building. (Exhibit 12, pp. 16-17.)
- Uses of Special Value: Under § 2403.9(i), “uses of special value to the neighborhood or the District of Columbia as a whole” are deemed to be public benefits and project amenities. The following aspects of the project can be considered to be uses of special value:
  - a national demonstration project for the highest levels of sustainable design;
  - landscaped plaza open to the general public;
  - retail uses on the ground floor of the headquarters building; and
  - AIA and AAF programs that are made available to the public.

(Exhibit 12, p. 17.)

20. First Source Employment Program: According to § 240.9(e), “employment and training opportunities” are representative public benefits and project amenities. The Applicant has agreed to enter into an agreement to participate in the Department of Employment Services (“DOES”) First Source Employment Program to promote and encourage the hiring of District of Columbia residents. (Exhibit 12, p. 17.)
21. The proposed PUD-related Zoning Map amendment to the C-3-C Zone District will facilitate the use of the Property for street-fronting retail uses that will assist in enlivening the plaza and the nearby streets. The PUD project will not increase density, height, or intensity of use on the Property as a result of the PUD related Map Amendment. The PUD project actually results in a minor reduction of the AIA headquarter office building’s gross floor area. The proposed PUD’s FAR, height, and lot occupancy are all within the matter-of-right limitations for the C-3-C Zone District, and are therefore well within the PUD standards set forth in 11 DCMR § 2405.
22. The Commission finds that the proposed PUD and related map amendment is not inconsistent with the District Elements of the Comprehensive Plan for the National Capital (“Comprehensive Plan”) and is fully consistent with the following components of the Comprehensive Plan:

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- Central Washington Area Element: The Comprehensive Plan advances the policy that Central Washington should remain as the premier office location in the Greater Washington region, offering a range of office space to various users. (Policy CW-1.1.2 Central Washington Office Space). In addition, the Area Element promotes “active street life throughout Central Washington through the design of buildings, streets, and public spaces.” (Policy CW-1.1.2 Creating Active Street Life and Public Spaces). The project will offer a newly renovated office building with a landscaped plaza, which is open to the public. The project will draw pedestrians from 18<sup>th</sup> Street and New York Avenue and will enliven a block of the City that is otherwise very quiet.
- Land Use Element: The Comprehensive Plan provides policies to offer “an attractive and accessible environment for shoppers” and to develop “outdoor sidewalks cafes, flower stands, and similar uses which ‘animate’ the street...” (Policy LU-2.4.10: Use of Public Space within Commercial Centers). The renovated plaza and street facing retail and multipurpose space are consistent with these policies.
- Environmental Protection Element: This element of the plan offers policies for energy efficiency and alternative energy sources (Policy E-2.2.5: Energy Efficient Building and Site Planning) and for major employers to implement energy conservation measures. (Policy E-2.2.6: Energy Efficiency at Major Employment Centers). In addition, the Comprehensive Plan provides polices promoting the use of permeable materials (Policy E-3.1.1: Maximizing Permeable Surfaces) and using construction practices that minimize impact on the environment. (Policy E-3.4.1: Mitigating Development Impacts) As a project that will attain LEED Platinum certification and will seek to achieve carbon neutrality by 2030, this project is entirely consistent with these policies. The stormwater and runoff containment measures that the project’s design will include are equally consistent with these policies. In addition, the project will use recycled and environmentally-friendly building materials, which is consistent with these policies.
- Economic Development Element: The Comprehensive Plan states that the District should be promoted as having the qualities that favor it as a headquarters or branch setting for multi-national corporations, including its economic, social, political and locational attributes. (Policy ED-2.1.2: Corporate Headquarters). Also, the Comprehensive plan promotes the construction of signature office buildings. (Policy ED-2.1.3: Signature Office Buildings). As a demonstration project for sustainable design, the renovated headquarters building will be a national symbol. In addition, the approval and development of this project will encourage other large national organizations to locate in the District and build similar projects. The sustainable design and historic preservation components of this project will be both a local and national emblem of commercial architecture.

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- Urban Design Element: The Comprehensive Plan promotes “excellence in the design of Downtown buildings and landscapes.” (Policy UD-2.1.4: Architectural Excellence). In addition, the Comprehensive Plan promotes policies to provide public spaces that stimulate and activate urban street life. (Policy UD-3.1.8: Neighborhood Public Space). The project will offer a unique combination of sustainable design components with particular attention paid to historic preservation of an existing office building. These elements will make the renovated headquarters building the hallmark of green commercial architecture. In addition, the plaza will enliven the area with a new public gathering space.
- Historic Preservation Element: The Comprehensive Plan encourages the preservation of historic buildings from the “recent past” or modern era. (Policy HP-1.1.4: The Recent Past). In addition, the Comprehensive plan promotes maintaining historic properties in the original uses. (Policy HP-2.4.2: Adaptation of Historic Properties for Current Use). The headquarters building was completed in 1973 and is part of the modern era of architecture. Accordingly, preserving this structure from the “recent past” is an important component of the project. In addition, the renovation of this historic structure maintains its use as a commercial office building.

### GOVERNMENT REPORTS

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

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

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

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

### **ANC REPORT**

25. At the May 18, 2009 public hearing, Eric Malinen, a duly authorized representative of ANC 2A, submitted ANC 2A's resolution in opposition to the consolidated PUD and related Zoning Map amendment application into the record. Mr. Malinen indicated that the ANC voted unanimously to oppose the Application. The resolution stated in part, "the Applicant's proposed public benefits and community amenities package is inconsistent with DC law since it fails to include any amenities for the immediately impacted Foggy Bottom-West End community." ANC 2A also submitted a report to the Commission, dated May 11, 2009, that discussed the ANC's opposition to the PUD and related map amendment. (Exhibit 20.)

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

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

### **PARTIES IN OPPOSITION**

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

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### CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD Project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.2.) The development of this PUD project satisfies the goals and standards of Chapter 24 of the Zoning Regulations to encourage well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
2. Notice of the public hearing was provided in accordance with the Zoning Regulations.
3. The proposed PUD meets the minimum area requirements of 11 DCMR §2401.1.
4. Under 11 DCMR § 2402.5, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards.
5. 11 DCMR § 2403 provides the standards for evaluating a PUD application. 11 DCMR § 2403.9 provides categories of public benefits and project amenities for review by the Commission. The objective of the PUD process is to encourage high quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under matter-of-right zoning. In this application, the Commission finds that the requested relief from the roof structure requirements can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Commission concludes that the benefits and amenities provided by the Project are entirely appropriate for the development proposed in this application. The Commission agrees with the Applicant’s written submissions and testimony and finds that the Applicant is requesting very few development incentives, as the Applicant is not requesting additional building height or density (the gross floor area of the AIA headquarters office building is actually decreasing) and the flexibility requested from the Zoning Regulations (solely related to the roof structures) is directly tied to the primary amenity of the project, the creation of a national demonstration project to show how the highest levels of Sustainable Design can be applied to a mid-20<sup>th</sup> Century office building.
6. The impact of the project on the surrounding area and the operation of city services and facilities is acceptable given the quality of public benefits in the project.
7. The Commission acknowledges the issues and concerns raised by ANC 2A and WECA and fully credits the unique vantage point that ANC 2A holds with respect to the PUD process and the impact of the PUD-related map amendment on the ANC’s constituents.

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However, for the reasons stated below, the Commission does not find either the ANC's or WECA's positions persuasive.

8. The Commission does not agree with WECA and ANC 2A that the public benefits and amenities offered by the PUD are insufficient for the impacts that the PUD will have on the neighborhood and for the amount of zoning flexibility requested by the Applicant. Instead, the Commission finds that the Applicant is requesting a limited amount of flexibility from the Zoning Regulations and that the impacts of the PUD project on the surrounding community will be negligible. The Commission finds that the benefits and amenities offered by the PUD should correspond with the extent of relief and development incentives that the Applicant is requesting and with the extent to which the PUD adversely impacts the surrounding properties. The Commission finds that the flexibility requested from the roof structure requirements is limited in scope, and the resulting roof plan will not adversely affect nearby properties. Further, the Commission finds that the PUD will have negligible impacts on the surrounding properties because the use, scale, height, and density of the building will not change (the gross floor area of the AIA office building actually decreases). The Commission concludes that the benefits and amenities offered by the PUD: (i) the significant environmental benefits created by this project; (ii) the creation of a national demonstration project for Sustainable Design of a potentially historic mid-20<sup>th</sup> Century office building; (iii) the enlivened plaza; and (iv) the street-facing and accessible retail and multipurpose space are public benefits commensurate with the limited zoning relief requested and with the PUD's negligible adverse impact on the surrounding community.
9. The Commission finds that the PUD and related map amendment process is the best means to accomplish the modifications proposed by the Applicant. In order to accomplish the proposed modifications through the BZA process, the Applicant would have to seek multiple variances and special exception relief. The Commission finds this process inappropriate and unnecessary. The Commission does not agree with the ANC and WECA that variance relief from the BZA would be the proper course of action for the Applicant's proposed modifications. The requested areas of relief from the Zoning Regulations can best be assessed and granted through the PUD process, which allows the Commission to consider the requested relief collectively, as opposed to piecemeal variances and special exceptions required by the BZA.
10. The Commission finds that the PUD-related map amendment is the best means to accomplish the proposed project's goals for animating the ground floor uses of the building. In particular, the Applicant would be required to seek a use variance for the proposed use of the multi-purpose room. The Applicant likely would be unable to meet the stringent criteria for a use variance, so this proposed multi-purpose room use would not be possible without the requested PUD-related map amendment. The Commission agrees with the Applicant that the proposed multi-purpose room use, and the bookstore use accessed directly from the exterior of the building, will enliven the pedestrian activity

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in the area and is consistent with numerous policies and goals of the Comprehensive Plan.

11. The Commission finds that the proposed PUD-related rezoning of the Property to the C-3-C Zone District is consistent with the surrounding uses, intensity of uses, and heights of surrounding properties. The rezoning of the Property is also consistent with the High-Density Commercial land use designation on the Future Land Use Map of the Comprehensive Plan. Approval of the PUD related map amendment application will result in no adverse effect on neighboring properties.
12. The Commission does not agree that its grant of the PUD-related map amendment will lead to an undesirable precedent or to multiple upzoning requests in the area. Each PUD and related map amendment application presented to the Commission is evaluated on its own merit. In this case, the Commission finds that the proposed PUD-related map amendment to the C-3-C Zone District does not violate the policy that supports buffer districts, like the SP-2 Zone District, between commercial and residential areas. The Property is surrounded by high-density commercial and government uses. No residential districts are adjacent to the Property, so the present SP-2 Zone District does not act as a buffer between commercial and residential land uses. The Commission finds that its granting of the PUD-related map amendment will maintain the integrity of the policy that supports buffer districts.
13. By virtue of the preceding discussion, the Commission has accorded the issues and concerns raised by ANC 2A the “great weight” to which they are entitled pursuant to D.C. Official Code § 1-309.10. The Commission fully credited the unique vantage point that ANC 2A holds with respect to the impact of the requested consolidated PUD and related map amendment on the ANC’s constituents. However, for the reasons stated above, the Commission concludes that the ANC did not offer persuasive evidence that would cause the Commission to deny the consolidated PUD and related Zoning Map amendment requested.
14. The Commission concludes that approval of the proposed consolidated PUD and related Zoning Map amendment from the SP-2 to the C-3-C Zone District is not inconsistent with the purposes of the Comprehensive Plan and is consistent with the other requirements of the Zoning Act. The proposed consolidated PUD and related Zoning Map amendment is not inconsistent with the inclusion of the Property in the High Density Commercial Land Use category on the Comprehensive Plan’s Future Land Use Map. The Commission also concludes that the proposed consolidated PUD and related Zoning Map amendment is in the best interests of the District of Columbia and will benefit the community in which the Property is located.
15. Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

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16. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. The Commission concurs with OP's recommendation for approval and has given its recommendation the great weight to which it is entitled.

### DECISION

In consideration of the Finding of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review of a Planned Unit Development and Zoning Map amendment application from the SP-2 to the C-3-C Zone District for Square 170, Lots 38 and 39. The approval of this PUD and related Zoning Map Amendment is subject to the following guidelines, conditions, and standards:

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

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6. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender expression or identity, familial status, family responsibilities, matriculation, political affiliation, disability, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

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

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

In accordance with the provisions of 11 DCMR § 3028, this Corrected Order became final and effective on July 17, 2009, the date upon which the original order was published in the *D.C. Register*.