

D.C. CHILDREN AND YOUTH INVESTMENT TRUST CORPORATION**NOTICE OF FUNDING AVAILABILITY****Fiscal Year 2010 Summer Programs**

Notice: ATTENDANCE AT A GRANT TECHNICAL ASSISTANCE SESSION AND SUBMISSION OF A NOTICE OF INTENT TO APPLY IS REQUIRED IN ORDER TO BE ELIGIBLE TO APPLY FOR THIS GRANT

Summary: The DC Children and Youth Investment Trust Corporation (The Trust) is a public-private partnership chartered by the District to help a wide variety of organizations improve the quality, quantity and accessibility of services and opportunities for every child in the city. The Trust works to increase resources and invest in the people, programs, and systems that serve children, youth, and their families in the District of Columbia.

The Trust announces the availability of a funding opportunity and invites qualified applicants to submit proposals to provide high quality summer programs to children and youth ages 5 – 24 in the District of Columbia during Fiscal Year 2010. Specifically, the Trust seeks to support the delivery of a variety of high quality programs that will provide purposeful and developmentally appropriate opportunities to help the District's children and youth meet developmental outcomes and to prevent summer learning loss. Applicant organizations must employ the youth development philosophy in its approach and program design. **Proposals will be funded in three (3) categories: Summer Youth Service Corps, Summer Programs in DCPS Facilities and Summer Programs in Community-Based/Alternate Facilities.** Applicants are allowed to submit no more than two (2) proposals in response to this RFP. The total amount available for granting is \$2.0 million. In the past, the average grant that has been awarded is between \$50,000 to \$60,000.

Criteria for eligible applicants: Eligible applicants must have 501(c) (3) tax-exempt status, been incorporated to operate in the District of Columbia, and providing direct services since no later than October 1, 2007; must be organized under the District of Columbia Non-profit Corporation Act (DC Code, sec.29-501 et seq.); must be a community-based organization, defined as: non-profit agency with a board of directors that is reflective of the community of population served; organization's primary vision and program focus must be on serving children, youth, and/or families within the District of Columbia; and, organization must be in good financial standing with the DC Office of Tax and Revenue and the Internal Revenue Service as well as follow all appropriate charitable financial reporting standards. For collaborative applications, one organization must act as the lead agency. That organization must meet all criteria listed and accept fiduciary, reporting and programming oversight responsibility for the application and grant. For programming in a DC Public School, organizations must be approved by DCPS through the vetting process described on the DCPS website.

An organization described in Section 501(c) (4) of the Internal Revenue Code, 26 U.S.C. 501(c) (4), that engages in lobbying activities is not eligible to apply, serve as a host site for members, or act in any type of supervisory role in the program. **Individuals are not eligible to apply.** All eligible applicants must meet all of the applicable requirements contained in the proposal guidelines and instructions. The Request for Proposal (RFP) will be released on December 14th

at 9:00am. The RFP will be available for download on the Trust's website at www.cyitc.org.
The deadline for submission to the Trust is January 29, 2010 at 4:00pm.

The Trust will hold (3) Grant Technical Assistance (GTA) Sessions. **In order to be eligible for this grant, attendance at one of the GTA sessions is mandatory for all applicants. Please note attendance will not be honored for an individual that arrives a minimum of 30 minutes or more late.** The sessions will convene on the following dates at these locations:

Wednesday, January 6, 2010 from 10:00 a.m. – 12:00 noon

Community Preservation Development Corporation – Crawford Hall
635 Edgewood Street, NE, 9th Floor

Wednesday, January 13, 2010 from 10:00 a.m. – 12:00 noon

THEARC – Community Room
1901 Mississippi Avenue, SE

Wednesday, January 20, 2010 from 6:00 p.m. – 8:00 p.m.

Columbia Heights Youth Club
1480 Girard Street, NW

To RSVP for a training session, please register online at www.cyitc.org.

Prospective applicants must submit a Notice of Intent to Apply to the Trust. The Notice of Intent to Apply form should be returned to the Trust by Wednesday, January 13, 2010.

Submittal of a Notice of Intent to Apply does not commit an agency to apply. However, failure to submit a Notice of Intent to Apply in a timely manner will disqualify an applicant. Any supplemental written information related to this RFP will be provided only to those organizations that have filed a Notice of Intent to Apply. A Notice of Intent to Apply should be submitted via mail or e-mail to:

D.C. Children & Youth Investment Trust Corporation
1400 16th Street, NW, Suite 500
Washington, DC 20036
Attn: Summer RFP
E-mail: rfp@cyitc.org

Questions must be submitted in person at the Grant Technical Assistance Session or via e-mail at rfp@cyitc.org on or before Thursday, January 21, 2010 at 4:00 p.m. All written questions concerning this RFP will be posted on the Trust's website at www.cyitc.org. If you have any additional inquiries, please contact Candace Jackson, Program Officer, at (202) 478-3876 or via email at rfp@cyitc.org.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PUBLIC INTEREST

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

Application Date	Address	Lot	Square	Use
November 16, 2009	5 D.C. Village Lane, SW	26	253	Single-story dormitory
November 16, 2009	3 D.C. Village Lane, SW	26	253	Superintendent's house
November 16, 2009	2 D.C. Village Lane, SW	26	6264	Central building and chapel
November 16, 2009	2 D.C. Village Lane, SW	26	6264	Infirmery
November 16, 2009	4 D.C. Village Lane, SW	26	6264	Single-story dormitory

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

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:

Darryl Shepard
Single-Member District 4D03

FRIENDSHIP PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

Friendship Public Charter School (FPCS) is soliciting proposals for the following service

CURRICULUM MANAGEMENT AUDITs

Friendship Public Charter School is seeking bids from prospective candidates to perform an audit of the quality of the school's system's curriculum management processes.

An electronic copy of the full Request for Proposal (RFP) may be requested by contacting:

Valerie Holmes
vholmes@friendshipschools.org
202-281.1722

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD
PROPOSED RULES “STUDENT CODE OF CONDUCT”

The State Superintendent of Education, pursuant to the authority set forth in section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11)) (2009 Supp.), hereby gives notice of an extension to the public comment period for proposed rules to amend Chapter 25, Subtitle E of Title 5 of the *District of Columbia Municipal Regulations* (DCMR), entitled “Student Code of Conduct.” These rules were published on Friday, November 13, 2009 at 56 DCR 8855 for a thirty day public comment period. The public comment period for these proposed rules is hereby extended for an additional thirty days, through Wednesday, January 12, 2010.

The proposed rules provide state level standards for the development of student conduct at a Local Education Agency (LEA) in the District of Columbia. The proposed rules give an LEA flexibility to develop a student code of conduct consistent with the state standards enunciated in Chapter A-25 of Title 5 of the DCMR. LEAs are required to establish policies and procedures with a broad range of strategies and interventions to maximize learning time, and to minimize classroom disruption. Consistent with best practices and a policy letter dated July 31, 2009, from the U.S. Secretary of Education to chief state education officers, these revisions also emphasize the importance of addressing the appropriate and selective use of seclusion and restraint techniques in schools.

Persons wishing to review or comment on the proposed rules may access them on the Office of the State Superintendent of Education webpage at www.osse.dc.gov. Comments on this rule may be submitted, in writing to the OSSE at www.ossepubliccomment@dc.gov and/or to the Office of the State Superintendent of Education, Attn.: Jessica Morffi, re: Proposed Regulations, Student Code of Conduct; 441 4th Street, NW, Suite 350 North, Washington, DC 20001, by Tuesday, January 12, 2010. Additional copies of this rule are also available from the District of Columbia Office of the Secretary at <http://www.dcregs.org/Gateway/IssueHome.aspx?IssueId=98>.

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

Application No. 17791 of DRM and Associates, Inc., pursuant to 11 DCMR §3104, for a special exception to continue operation of a child development center (50 children, infant to 12 years, and 9 staff) under § 205, and a variance from the off-street parking requirements under § 2101.1, in the R-4 district, at premises 728 F Street, N.E. (Square 891, Lot 49).¹

HEARING DATES: July 8, 2008 and March 17, 2009

DECISION DATES: April 14, 2009 and May 19, 2009

DECISION AND ORDER

BACKGROUND

This self-certified application was submitted on February 19, 2008 by DRM and Associates, Inc., (“Applicant”), the owner of the property which is the subject of this application (“subject property”). The application, after several modifications to the requested relief, finally requested a special exception to continue the operation of a child development center (“CDC”) on the subject property, and a variance to not provide the required parking for the CDC use.

The Board of Zoning Adjustment (“BZA” or “Board”) began a hearing on the application on July 8, 2008, but postponed it for several months because Board Order No. 16446 was valid for another year -- until July 3, 2009 -- and permitted the CDC to care for children under two years of age. This would have been prohibited by the then-definition of CDC in the Zoning Regulations if a new order had been issued prior to the definition being changed. Therefore, the Board continued the hearing to await the issuance of a Zoning Commission Rulemaking which would change the definition of “child development center” to correct the oversight which

¹The application was originally also advertised for a special exception to establish a community service center, and several area variances which would have been necessary to permit construction of an addition to the building on the subject property. On June 18, 2008, the Applicant amended his application to omit all the requested relief except that necessary for the continued operation of an already-existing child development center. Exhibit No. 26.

There was also some question as to whether parking relief was needed. The Board of Zoning Adjustment Order first permitting the child development center on the subject property had granted the Applicant a variance to provide the two required parking spaces off-site. *See*, Board Order No. 15456 (1991), at 2-3 and at 7, Condition #4. The most recent Order continued this arrangement. Exhibit No. 8, at 3, Condition #6 (Board Order No. 16446 (1999)). During the pendency of this proceeding, the two off-site parking spaces became unavailable. The Applicant proffered two spaces in a new location, but, because these new spaces were located within the H Street Overlay Zoning District, one of the goals of which is to restrict surface parking lots, the Office of Planning recommended a term of five years on the use of these spaces. Exhibit No. 49. In response to the Office of Planning’s recommendation, the Applicant amended his application to request a variance to not provide any parking at all, on-, or off-site. Exhibit No. 50.

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prohibited such centers from caring for children under two years of age.² The Zoning Commission took final action on the text amendment to change the definition of child development center on February 9, 2009 and the hearing on this application was completed on March 17, 2009. (*See*, Zoning Commission Order No. 08-16/08-16A).

The Board scheduled a decision meeting for April 14, 2009. At the decision meeting, the Board requested additional information because (1) both the interested Advisory Neighborhood Commission (“ANC”) and the opposing party had expressed their opposition before the Applicant had greatly reduced the amount and nature of relief he was seeking and (2) the Board had been informed by the Applicant that the opposition party had withdrawn his opposition. The Board, therefore, re-scheduled the decision meeting for May 19, 2009, to permit these two entities time to reconsider their positions and make any change known to the Board.

The day before the decision meeting, that is, on May 18, 2009, the Applicant submitted a letter finally requesting a variance in order to not provide any parking, prompted by the Office of Planning’s (“OP”) recommendation of a five-year term for the H Street parking spaces. The Board took this letter into account in making its decision on May 19, 2009, and decided, by a vote of 3-0-2, to grant the special exception relief for the continuation of the CDC and the variance relief to permit the CDC to provide no parking.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated February 22, 2008, the Office of Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Departments of Health (“DOH”) and Transportation (“DDOT”), ANC 6C, the ANC within which the subject property is situated, Single Member District 6C06, and the Council Member for Ward 6. Pursuant to 11 DCMR 3113.13, OZ published notice of the hearing in the *D.C. Register*, and on April 18, 2008, sent such notice to the Applicant, ANC 6C, and all owners of property within 200 feet of the subject property.

Request for Party Status. ANC 6C was automatically a party to this application, and although originally in opposition (Exhibit No. 25), reversed its position to one of support after the Applicant reduced the relief requested and the ANC received more information concerning the operation of the existing child development center. Exhibit No. 46.

Vincent Morris, who owns the building next door to the subject property, requested, and was granted, opposition party status. His request for party status was filed before the reduction in requested relief. Exhibit No. 23. Mr. Morris appeared at the hearing on July 8, 2008, but did not appear at the continued hearing date of March 17, 2009. It appears that by the latter date, Mr. Morris’ opposition had largely abated, and at the March 17, 2009 hearing, the ANC

²The subject CDC had traditionally cared for children under two, and the Applicant indicated his intention to continue to do so.

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representative stated that Mr. Morris no longer opposed the application, although Mr. Morris himself was not present to corroborate this. Exhibit No. 41.

Applicant's Case. Mr. Donald Madden, the representative of DRM and Associates, testified on behalf of the Applicant at the hearing. He explained that the Applicant had been operating the CDC for many years at the subject property without significant problems and that it provides a needed service to the local community. He stated that the center was operating pursuant to Board Order No. 16446, which had imposed a 10-year term on the center, and requested that no term be included in this Board Order. Mr. Madden also explained that he used to own the property at 600 9th Street, N.E., where the CDC's two off-street parking spaces had been located, but that he had sold the property, and these spaces were no longer available. After trying to come to a workable arrangement for new parking spaces, the Applicant requested a variance to not provide any parking.

Government Reports. The Office of Planning submitted three reports to the Board recommending approval of the continued operation of the child development center. Exhibits Nos. 27, 38, and 49. In the first report, dated July 8, 2008, OP discussed each provision of 11 DCMR § 205 in turn and determined that the application met them all. In this report, OP recognized that the Applicant had been providing the required two parking spaces off-site, and recommended that this practice continue. OP's second report, dated March 10, 2009, was filed after the decision of the Zoning Commission in Case No. 08-16 (and 08-16A) expanded the definition of child development center to include infants. The Supplemental Report again recommended approval of the CDC, with specific conditions, including the continuation of the off-site parking arrangement.

OP's third report addressed only the Applicant's request to relocate its two off-site parking spaces from 9th Street to H Street. Exhibit No. 49. OP was not opposed to this relocation, but recommended a "time limit" of five years. It is not entirely clear from the OP report whether this "time limit" went only to the location of the parking spaces, or to the CDC use itself, but a five-year restriction on the parking could have the effect of putting a five-year restriction on the use. Even if the restriction were intended to apply only to the location of the spaces, if, in five years, the CDC could not provide the required parking, it could not meet the special exception requirements, and would have to come back before the Board. The Applicant interpreted OP's recommended five-year restriction as putting a five-year term on the use, prompting him to amend his application to request a variance to not provide any parking.

The D.C. Department of Health submitted a report to the Board dated June 3, 2008 recommending approval of the special exception for the continuation of the CDC, but indicated that the center had had "licensure issues" in the past. Exhibit No. 24.

ANC Reports. ANC 6C's initial report opposed all aspects of the application. Exhibit No. 25. This report, filed June 19, 2008, and reflecting ANC action taken at a June 11, 2008 meeting, was written before the application was amended to eliminate all relief requests but those for

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continuation of the CDC and for parking. The second ANC report, dated March 13, 2009, requested an extension of time until April 10, 2009, within which to reconsider the application, as it had changed significantly since the first time the ANC had addressed it. Exhibit No. 45. The third ANC report was filed on April 10, 2009, after the ANC had reconsidered the application and had had the benefit of working further with the Applicant. This third report, Exhibit No. 46, supports the application to continue operation of the CDC. None of the ANC reports addressed the Applicant's request for a variance to not provide any parking, as that request was not finally made until May 18, 2009.

FINDINGS OF FACT

1. The subject property is located at address 728 F Street, N.E. at the intersection of 8th and F Streets, N.E., in an R-4 zone district in Square 891, Lot 49.
2. Lot 49 has an area of approximately 1,520 square feet and is improved with a two-story brick row dwelling with a one-story portion at its rear.
3. The building on the subject property was constructed in approximately 1900 and occupies 100% of the lot.
4. There is no alley behind the subject property and the rear wall of the subject building abuts the side of another building fronting on 8th Street.
5. The neighborhood is developed predominantly with moderate density row dwellings, interspersed with garden apartments and neighborhood-serving commercial establishments.
6. A child development center has been operating on the subject property since 1991, when it was first permitted by Board Order No. 15456.
7. The CDC use on the property was re-authorized in 1999 for a 10-year term by Board Order No. 16446. Order No. 16446 was issued on June 23, 1999, making it effective on July 3, 1999, and thus making the end of the 10-year term on July 3, 2009.
8. Pursuant to Order No. 16446, the Applicant had been providing "two leased parking spaces for staff use at 600 9th Street, N.E." See, Board Order No. 16446, at 3, Condition No. 6.
9. The two off-site parking spaces serving the CDC use became unavailable, and the Applicant requested a variance to not provide any parking for the use.

The Special Exception for the CDC

10. The CDC use has been licensed and operating at the subject property since 1991. 11 DCMR § 205.2.

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11. The CDC has a maximum of nine staff members and a maximum of 50 children and its hours of operation are from 7:00 a.m. to 7:00 p.m., Monday through Friday. See, Board Order No. 16446, at 3, Conditions #2 & #3.
12. Most of the students who attend the CDC walk there or arrive by public transportation. 11 DCMR § 205.3.
13. Those children who arrive by vehicle are dropped off and picked up at the F Street front of the subject building within a DDOT-designated loading area and adults escort the children between the vehicles and the CDC. 11 DCMR § 205.3.
14. An on-site outdoor play area is provided for the children on the fenced-in roof of the one-story portion of the building. 11 DCMR § 205.5.
15. The solid fence surrounding the rooftop play area provides both a visual and an auditory screen of the activities occurring there. 11 DCMR § 205.5.
16. Other than the outdoor play, all other CDC activities occur indoors, so there is no significant noise or activity of children outside the building. 11 DCMR § 205.5.
17. The CDC has no obtrusive outdoor lighting and its exterior is clean and well-maintained. 11 DCMR § 205.5.
18. The CDC's trash is stored in a covered container under the stairway landing and its trash and recyclables are picked up three times a week. Exhibit No. 43.
19. Two off-site play areas are also used by the CDC's children, both of which are approximately two blocks from the subject property and can be reached without crossing a major intersection. 11 DCMR § 205.7.
20. Both off-site play areas are established recreational facilities and children from the CDC attend in groups of a maximum of 12, attended by at least four adults. 11 DCMR § 205.7.
21. There is no other child development center within 1,000 feet of the subject property. 11 DCMR § 205.8.
22. A CDC use, as it is permitted in this R-4 zone, is considered compatible with that zone, as long as it meets the applicable provisions of the Zoning Regulations. 11 DCMR § 3104.1.
23. The subject CDC provides a needed service to its community and has operated at this location for 18 years with no serious incident. 11 DCMR § 3104.1.

The Parking Variance

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24. With nine staff members, the CDC requires two parking spaces. 11 DCMR § 2101.1.
25. The subject property has no rear alley access.
26. Although in an R-4 zone, where only 60% lot occupancy is permitted for a row dwelling, the subject building occupies 100% of the lot, so no parking spaces can be accommodated on site. (*See*, 11 DCMR § 403.2).
27. The establishment of the H Street Overlay nearby, with its goal of restricting surface parking, has hindered the Applicant's ability to provide off-site parking spaces to fulfill the parking requirement.
28. The CDC on the subject property has operated for many years with no on-site parking spaces.
29. The lack of on-site parking spaces has not resulted in any significant adverse parking or traffic impacts on the neighborhood.
30. Drop-off and pick-up of children at the CDC have been handled successfully for years without any on-site parking area.

CONCLUSIONS OF LAWSpecial Exception Relief

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of § 3104, the Applicant also had to meet the requirements of § 205 with regard to the continuation of the CDC use.

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

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The subject CDC has been licensed by the District of Columbia for many years and will be able to continue to meet applicable code and licensing requirements, thus fulfilling the mandate of 11 DCMR § 205.2. There is no evidence in the record concerning negative impacts on the neighborhood due to the drop-off/pick-up arrangement currently in place at the CDC. Nor is there any evidence of negative impacts due to traffic caused by the CDC. The record is devoid of any complaints concerning either of these issues, which are often of great concern to neighbors of CDC's. The Board, as well, can find nothing objectionable concerning the traffic and/or drop-off/pick-up at the CDC, and concludes that § 205.3 is satisfied.

The CDC provides an enclosed outdoor play space on top of the rear one-story portion of its building. The rooftop space is screened by a high fence or wall and appears to have its own external stairway access to the street. *See*, Exhibit No. 44. The CDC children are also escorted to two off-site play areas close by, but only in groups of up to 12, with an adult-to-child ratio of 1:3. No major intersections need to be crossed to reach these off-site playgrounds, and the Board concludes that 205.7 is also satisfied.

Other than outdoor play, all CDC activities occur within the building, keeping external noise to a minimum. The CDC has a contract with a private trash hauler and its trash and recyclables are picked up three times a week. As depicted by Exhibit No. 44, the exterior of the CDC building is clean and well-maintained, and the Board concludes that the CDC will cause no objectionable impacts to adjacent or nearby properties, as required by §§ 205.5 and 3104.1. On the contrary, the CDC provides a valuable service to the community and the use is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. Lastly, § 205.8 is satisfied as well, as there is no other CDC within 1,000 feet of the subject CDC.

Variance Relief

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. The "exceptional situation or condition" of a property can arise out of the structures existing on the property itself. *See*, e.g., *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). Relief can be granted only "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." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2.

A showing of "practical difficulties" must be made for an area variance, while the more difficult showing of "undue hardship," must be made for a use variance. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case is requesting an area

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variance, therefore, he had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in a practical difficulty in complying with the Zoning Regulations. Lastly, the Applicant had to show that the granting of the variance will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The subject property is beset with two exceptional conditions – it has no alley access and the building occupies 100% of the lot. The building, constructed in 1900, long before the current Zoning Regulations permitted a maximum 60% lot occupancy for a row dwelling in an R-4 zone, was constructed to cover the entire lot area. Other nonconforming row dwellings in the District of Columbia abut a rear alley to facilitate access, but such is not the case here. Because there is no way for a vehicle to access the lot and nowhere on the lot to store, *i.e.*, park, one, let alone two, vehicles, the provision of the two required on-site parking spaces poses practical difficulties for the Applicant in meeting §§ 205.4 and 2101.1 of the Zoning Regulations.

Granting the Applicant a variance from providing the two required parking spaces will not cause a substantial detriment to the public good nor impair the intent or integrity of the Zone Plan and Regulations. At the time of the hearing, the subject CDC had eight staff members, only one of whom drove to the site. Transcript of March 17, 2009 hearing, at 407. This could, of course, change, but the Applicant indicated that the staff has traditionally walked or used public transportation to reach the site, and there does not appear to be any reason to foresee a sudden change from this pattern. There is a Metrobus stop at the same corner where the CDC is located, literally, several feet from the building, so there is convenient access by public transit.

The Board concludes that the application meets the three prongs of the area variance test and that granting the requested parking variance will permit the long-operating CDC to continue its successful operation and its beneficial service to the community.

The Board is required to give “great weight” to the issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the legally relevant issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

The Office of Planning twice recommended approval of the special exception to continue the operation of the CDC and the Board agrees with this recommendation. OP did not address the variance to provide no parking in writing, but at the hearing on March 17, 2009, the OP representative stated several times that OP would most likely support such a variance. Transcript of March 17, 2009 hearing, at 418-420. Again, the Board agrees with the position expressed by the OP representative.

ANC 6C also recommended granting the special exception to continue the CDC and the ANC representative testified positively with respect to the CDC at the March, 17, 2009 hearing. The Board agrees with the ANC’s recommendation. The ANC did not express an opinion as to the

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parking variance;³ therefore, with respect to the variance request, there is nothing to which the Board can accord great weight.

For all the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to a special exception pursuant to §§ 3104.1 and 205, to continue operation of a child development center at the subject property, and with respect to a variance from the § 205.4 and § 2101.1 parking requirement associated with the child development center use. Accordingly, this application is hereby **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The number of children at the child development center shall not exceed 50. The number of staff shall not exceed nine.
2. The hours and days of operation of the child development center shall be from 7:00 a.m. to 7:00 p.m., Monday through Friday.
3. Drop-off and pick-up of children shall be from the street in front of the main entrance to the center.
4. Staff or volunteers shall escort children between the center building and vehicles during all hours that drop-off and pick-up of children occur.
5. The Applicant shall maintain a solid or baffled-wood fence around the deck play area to minimize the noise created by the on-site outdoor play area.
6. Trash shall be stored in a covered container under the existing stairway landing. Trash pick-up shall occur during the hours the child development center is not in operation.

VOTE: 3-0-2 (Marc D. Loud, Shane L. Dettman, and Anthony J. Hood to APPROVE; two Board members (vacancies), not participating)

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

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

FINAL DATE OF ORDER: NOVEMBER 25, 2009

³The possibility of a variance to provide no parking was discussed at the hearing, and the Board left the record open for both the ANC and the opposition party to file further submissions between the first decision date of April 14, 2009, and the second decision date of May 19, 2009. Such further submissions could have addressed the parking variance, but neither party filed anything with the Board.

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

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN 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 GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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

MN

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

Application No. 17944 of The Lab School of Washington, pursuant to 11 DCRM § 3104.1, for a special exception to allow the continued use of an existing private school (200 pre-kindergarten to fifth grade children and 40 staff) under § 206, in the R-1-B District at premises 4470 Q Street, N.W. (Square 1363, Lot 980).

HEARING DATE: July 21, 2009

DECISION DATE: July 28, 2009

SUMMARY ORDER

PRELIMINARY MATTERS:

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 (56 DCR 3664) and by mail to Advisory Neighborhood Commission (“ANC”) 3D, and to the owners of property within 200 feet of the subject property.

The subject property of this application is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 3D, which was automatically a party in this proceeding in addition to the Applicant. ANC 3D submitted a written statement and attended the public hearing in support of the application, subject to certain conditions. There were no additional requests for party status.

The Office of Planning (“OP”) recommended approval of the requested special exception subject to nine conditions, including that the “number of students shall not exceed 200, pre-kindergarten through fifth grade.” OP noted that the Applicant was not proposing to increase the number of students or staff beyond the conditions previously adopted by the Board for another private school use at the same location, when 197 students were enrolled at the subject property, and that the site also formerly housed a public school with a peak enrollment of 230 students. OP did not anticipate any objectionable conditions as a result of the proposed private school use since the past use of the subject property had not resulted in any objectionable conditions.

At a public meeting held July 1, 2009 with a quorum present, ANC 3D voted 6-2 “to approve the Lab School’s application for special exception approval” subject to eight conditions. The conditions proposed by ANC 3D were similar to those recommended by the Office of Planning, with the principal exception that the ANC proposed that the “number of students shall not exceed 100, pre-kindergarten through fifth grade.” ANC 3D stated that its assertion that the site’s “present cap of 200 students [should] be reduced to 100 students” was “not meant as a sanction or criticism of the Lab School,” which currently enrolls 72 students at the subject property, had

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indicated no intent to enroll 200 students, and “doubted they would grow to even 100 students, in light of their desired student to teacher ratio and other elements of their teaching approach.” Rather, ANC 3D argued that “the cap should be lowered to the more realistic level of 100 students to give the community some predictability and control over the matter.”

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements necessary to establish the case for a special exception pursuant to §§ 3104.1 and 206. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party in opposition to this application. Accordingly, a decision by the Board to grant this application will not be adverse to any party.

Pursuant to 11 DCMR § 3110.5, 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. The waiver will not prejudice the rights of any party and is appropriate in this case.

Based on the record before the Board, and having given great weight to the issues and concerns of ANC 3D and to the recommendation of the Office of Planning, the Board concludes that the Applicant has met the burden of proof and 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, as conditioned by the Board, will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board is required to give “great weight” to any issues and concerns raised by ANC 3D in this proceeding. ANC 3D was in support of the application subject to a number of conditions, which were accepted by the Applicant with the exception of the ANC’s proposal to limit student enrollment to 100 students. The Board credits the unique vantage point that ANC 3D holds with respect to the impact of the requested special exception on the ANC’s constituents. However, the Board concludes that the ANC did not offer persuasive evidence that would cause the Board to find that the special exception should be granted subject to a condition limiting enrollment to 100 students rather than the 200 students requested by the Applicant. The ANC did not claim that enrollment of 200 students would create objectionable impacts or adversely affect the use of neighboring property, but asserted that a cap of 100 students was “realistic” given the school’s current and projected enrollment and a means to “give the community some predictability and control over the matter.” The Board concurs with OP that a condition limiting enrollment to 200 students is appropriate under the circumstances, especially given that the Applicant did not propose to increase the number of students or staff beyond the conditions previously adopted by the Board for another private school use at the same location, when 197 students were enrolled at the subject property without creating adverse impacts, and that OP did not anticipate any objectionable conditions as a result of the Applicant’s proposed private school use. With regard to predictability, the Board notes that the Applicant may not increase its enrollment above 200 students, or its staff above 40, without obtaining prior approval of the Board. Absent a showing by the ANC that enrollment of 200 students would cause objectionable conditions, the Board

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concludes that approval of the requested special exception, subject to the conditions approved in this order, is consistent with the requirements of §§ 206 and 3104 of the Zoning Regulations.

It is therefore **ORDERED** that this application is **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Approval shall be for a period of 10 years, beginning on the expiration date of the prior approval and ending on September 30, 2019.
2. The number of students shall not exceed 200, pre-kindergarten through fifth grade.
3. The number of staff shall not exceed 40.
4. The hours and days of operation (for academic purposes) shall be 8:00 a.m. to 6:00 p.m., Monday through Friday.
5. Twenty-six on-site parking spaces shall be provided.
6. The Applicant shall maintain an ongoing liaison committee with the Foxhall Community Citizens Association, Advisory Neighborhood Commission 3D, and other interested community members. The liaison committee shall meet at least four times a year to discuss and resolve community and school related issues.
7. Landscaping, consisting of evergreen trees, shall be provided and maintained on the north parking lot (the Q Street side of the site).
8. The Applicant may make the facility available for gatherings such as those of community organizations including Palisades Village and for school-related activities such as back-to-school night.
9. The Applicant shall implement a traffic management plan ("TMP"), which shall regulate vehicle access and parking on the property. The TMP shall include the provision of shuttle service and other methods to reduce the use of private automobiles by staff and parents. The Applicant may modify the TMP over time, to respond to changing traffic conditions, subject to discussions with the community liaison committee.
10. Student tutors from local universities who visit the subject property each school day to participate in the Applicant's private school program shall use the Applicant's shuttle service when traveling to and from the subject property.

VOTE: 4-0-1

(Marc D. Loud, Shane L. Dettman, Meridith H. Moldenhauer, and Anthony G. Hood (by absentee vote) voting to Approve; one Mayoral

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appointee (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 25, 2009

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

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

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

MN

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

Application No. 17991 of Robert A. Spelke, pursuant to 11 DCMR § 3103.2, for a variance from the minimum 900 square feet of land area per dwelling unit requirements under subsection 401.3, to allow the conversion of an existing building into a three (3) unit apartment house in the R-4 District at premises 2034 North Capitol Street, N.W. (Square 3117, Lot 74).

HEARING DATE: November 17, 2009
DECISION DATE: November 17, 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) 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 submitted a report in support of the application. The Office of Planning 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 § 3103.2, for a variance from § 401.3. 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 ANC and OP reports filed in this case, the Board concludes that in seeking a variance from § 401.3, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty 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, pursuant to Exhibit No. 15 (Architectural Plans & Elevations) is hereby **GRANTED**.

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

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

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

FINAL DATE OF ORDER: NOVEMBER 25, 2009

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

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.

TWR

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

Application No. 17997 of Jane V. Saunders, pursuant to 11 DCMR § 3104.1, for a special exception to allow a one story rear addition to an existing one-family row dwelling under section 223, not meeting the lot occupancy requirements (section 403), side yard requirements (section 405), court requirements (section 406), and nonconforming structure (subsection 2001.3) provisions, in the D/R-1-B District at premises 1681 32nd Street, N.W. (Square 1281, Lot 19).

HEARING DATE: November 24, 2009

DECISION DATE: November 24, 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) 2E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. ANC 2E submitted a report in support of the application. The Office of Planning (OP) 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 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.

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Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 8 Plans & Elevations) be **GRANTED**.

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

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: November 25, 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.

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

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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. 17998 of Ruth H. Lawrence, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under section 771, a variance from the side yard requirements under section 775, and a variance from the off-street parking requirements under subsection 2101.1, to construct (through renovation and addition) a new three story office building in the C-2-A District at premises 3010 Martin Luther King, Jr. Avenue, S.E. (Square 5952, Lot 44).

HEARING DATE: November 24, 2009

DECISION DATE: November 24, 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) 8C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8C which is automatically a party to this application. ANC 8C submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2, from the variance requirements of sections 771, 775 and 2101.1. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP and ANC reports, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 771, 775 and 2101.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty 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.

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Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 10 (plans and elevations) be **GRANTED**.

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

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: November 25, 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.

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

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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

Appeal No. 18027 of Mehmet Kocak and Philly Pizza & Grill, Inc., pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, made October 14, 2009, to issue a Notice to Revoke Certificate of Occupancy No. 0800124 (“Restaurant 7 Seat – Prepared Food Shop,” dated September 11, 2008), concerning property located in the C-2-A district at premises 1211 Potomac Street, N.W. (Square 1207, Lot 124).

STAY DECISION DATE: November 17, 2009

ORDER GRANTING STAY

On October 23, 2009, an appeal was filed by Mehmet Kocak and Philly Pizza & Grill, Inc. (together, the “Appellant”), who challenged an administrative decision made by the Zoning Administrator on October 14, 2009 to issue a Notice to Revoke Certificate of Occupancy No. 0800124 concerning property located in the C-2-A district at 1211 Potomac Street, N.W. (Square 1207, Lot 124). Simultaneously with the appeal, the Appellant requested “immediate action” by the Board “to issue a Stay of the Notice to Revoke to prevent its enforcement” by the Department of Consumer and Regulatory Affairs (“DCRA”) while the appeal was pending.

The Board considered the request on November 17, 2009, hearing argument and testimony from the Appellant and DCRA. At the conclusion of the meeting, the Board voted to stay the effectiveness of the Notice to Revoke until the conclusion of the Board’s hearing on the appeal, which it rescheduled from February 9, 2010 to the afternoon of January 12, 2010, pursuant to § 3112.9.

CONCLUSIONS OF LAW

The Board’s Jurisdiction

DCRA argued that the Board has no authority to stay an enforcement action. The Board need not address that precise issue, because it believes that the requested relief can be more narrowly formulated as a request to stay the effectiveness of the notice to revoke. DCRA does not deny that it has the authority to stay the effect of a revocation notice. Indeed § 110.6.2 of the Construction Codes, Title 12A DCMR, contemplates a stay process when stating that “the filing of an appeal of the revocation shall not operate to stay the revocation.”

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BZA APPEAL NO. 18027**PAGE NO. 2**

Yet, DCRA claims that the Board does not also possess this power. Based upon the record it is clear that the Appellant requested DCRA to stay the appeal and the agency effectively refused.¹ Section 8 of the Zoning Act authorizes this Board to “to hear and decide appeals where it is alleged by the Appellant there is error in any ... refusal made by the Inspector of Buildings [now DCRA] in the ... enforcement of any regulation adopted pursuant to this Act.” D.C. Official Code § 6-641.07 (g). And in exercising that power the Board may “reverse ... the refusal appealed from; or may make any order that may be necessary to carry out its decision or authorization; and to that end shall have all the powers of the officer or body from whom the appeal is taken.” *Id.*

As part of this larger appeal, the Appellant is contending that DCRA erred in refusing to stay the revocation. The Board has now decided that DCRA erred in refusing to grant that request, and having reached that determination, possesses all of the powers of the Code Official.² Moreover, the District of Columbia Court of Appeals has recognized the Board’s “primary jurisdiction in administering the zoning laws”. *Murray v. District of Columbia Bd. of Zoning Adjustment*, 572 A.2d 1055, 1057 (D.C.1990).

The Merits

Subsection 110.5.1 of the Construction Codes authorizes the Code Official to revoke a certificate of occupancy when “the actual occupancy does not conform with that permitted”. Pursuant to subsection 110.6 notice of a proposed revocation must be “personally served or sent by first-class mail, postage prepaid, at least ten (10) days prior to the date of the proposed action”. Such a notice was issued by DCRA to the Appellant based upon a violation of § 110.5.1. In essence, DCRA claimed that the use as operated did not meet the definition of a restaurant because its facilities for carryout were not “clearly subordinate to the principal use of providing prepared foods for consumption on the premises”. 11 DCMR § 199.1 (definition of “Restaurant”). Instead, DCRA viewed the operation as a fast food establishment. Based upon the date that the notice was served, the Notice to Revoke would become effective on November 17, 2009.

To prevail on a motion for stay, the party seeking the stay must demonstrate that (i) it is likely to prevail on the merits, (ii) irreparable injury will result if the stay is denied, (iii) the opposing party will not be harmed by a stay, and (iv) the public interest favors the granting of a stay. *See Kufлом v. District of Columbia Bureau of Motor Vehicle Services*, 543 A.2d 340, 344 (D.C. 1988) (administrative agency required to consider the four specified factors in considering a motion for stay). Where the last three factors strongly favor temporary relief, only a “substantial” showing of likelihood of success, not a “mathematical probability,” is necessary for the grant of a stay. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987).

Likelihood of Success on the Merits.

¹ As a consequence of this *de facto* denial, the Appellant may be said to have exhausted its administrative remedies at the DCRA level.

² For the purposes of this appeal, the Code Official is the DCRA Director or her designee. 12A DCMR § 103.1.

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The Board concludes, based on the evidence and testimony in the record, that the Appellant has proffered evidence suggesting that its carryout facilities were subordinate to the principal restaurant use during the time period of DCRA's investigation. In addition, there is evidence to suggest that the use did not meet any of the three criteria of a fast food establishment as set forth in the definition of that use at 11 DCMR § 1991. There clearly is no drive-through facility on the premises. In addition, the Appellant has proffered evidence supportive of its claim that its non-carry-out customers were served food on non-disposable plates and paid for their food after its consumption during the relevant period.

The Board wishes to make it clear that it has not found that the Appellant has met its burden of proof for this appeal nor does the above finding in any other way bind the Board when hearing or determining the merits of the appeal.

Irreparable Harm

The Appellant contends that the closing of its business until February 9, 2010, will result in irreparable harm. As noted, the Board announced prior to its deliberations that the hearing date would be moved forward from February 9, 2010 to January 12, 2010. Therefore, the time period within which to determine whether the closing of this business will result in irreparable harm ends on the January date. It is "well settled that economic loss does not, in and of itself, constitute irreparable harm. ... Recoverable monetary loss may constitute irreparable harm only where the loss threatens the very existence of the movant's business." *Wisconsin Gas Co. v. F.E.R.C.*, 758 F.2d 669, 674, 244 U.S.App.D.C. 349, 354 (D.C Cir.1985). *Accord, Zirkle v. District of Columbia*, 830 A.2d 1250, 1257 (D.C. 2003). The Board concludes that the Appellant has presented credible evidence that its business would likely not survive if forced to close pending the Board's decision on the appeal. Therefore the Board concludes that denial of the stay will result in irreparable harm. "An injunction should not be issued unless the threat of injury is imminent and well-founded, and unless the injury itself would be incapable of being redressed after a final hearing on the merits." *Wieck v. Sterebuch*, 350 A. 2d 384 (D.C. App 1976); *See Canal Authority v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). The closing of the restaurant would have occurred immediately pursuant to the effective date of the Notice to Revoke had the status quo not been maintained.

Harm to the opposing party

For the purposes of this discussion, the opposing party is DCRA, since as of the date of the stay hearing, the affected ANC did not have the opportunity to designate a representative to express its view nor has any motion to intervene been granted. Nevertheless, DCRA stands in the shoes of the public when it seeks to enforce violations of the Zoning Regulations, particularly when it attempts to close an unlawfully operated use.

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Although the Board makes no definitive finding as to the nature of the Appellant's operations at the time the Notice to Revoke was issued, the Appellant's continued operation within the scope of its certificate of occupancy ("C of O") would not create any significant harm to DCRA or the public. From photographic and other evidence presented, the Appellant's carryout facilities are apparently subordinate to its restaurant use and no aspect of its operations meets any of the three criteria for a fast food establishment. There can be no harm to DCRA or the public in the continued operation of the use within the scope of its C of O. Should DCRA prove to the Board that these circumstances change, it may ask this panel to rescind this stay.

The public interest in the granting of a stay

The Board is highly sympathetic to the concerns expressed by the neighbors as to the alleged adverse impact of this use, but most of the concerns expressed dealt not so much with how the use is being operated as with the conduct of its customers. However, a restaurant certificate of occupancy may not be revoked due to the misconduct of its clientele. In general, the Board believes that the public interest favors the continuation of a lawful operating use. Because it believes that a stay is needed to allow this particular establishment to survive, the Board concludes that the public interest favors the grant of this stay.

Great Weight

This hearing was held prior to notice of the appeal being provided to the affected Advisory Neighborhood Commission. Such notice is required "for decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation which affect that Commission area". D.C. Official Code § 1-309.10 (a). As to zoning matters, such notice must be given 30 business days "before the formulation of any final policy decision or guideline with respect to ... requested or proposed zoning changes, variances". D.C. Official Code § 1-309.10 (c)(1). Although appeals are not specifically mentioned, the Board's rules treat appeals as coming within the ambit of the notice requirement. Nevertheless, the decision as to whether to grant this stay is not a final decision as to this appeal, but concerns whether the *status quo* should be maintained while that final decision is formulated. The ANC will be given notice of this appeal and afforded the 30 business day period to submit a written report before that final decision is made.

CONCLUSION

The Board concludes that the Appellant has met the burden of proof with respect to the motion to stay the effectiveness of the Notice to Revoke Certificate of Occupancy No. 0800124, issued by the Zoning Administrator on October 14, 2009, concerning property located in the C-2-A district at 1211 Potomac Street, N.W. (Square 1207, Lot 124). In deciding the appeal, the Board will consider whether the Zoning Administrator erred in issuing the Notice to Revoke on October 14, 2009. The operation of the Appellant's business since the notice was issued is not germane to a

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determination of whether the business was previously operating within the scope of its certificate of occupancy.

For the reasons stated, it is hereby **ORDERED** that the motion for stay is **GRANTED** up to and through the completion of a hearing (including any bench decision) on the appeal of the administrative decision to issue the notice, now scheduled for January 12, 2010.

VOTE: **4-0-1** (Marc D. Loud, Shane L. Dettman, Meridith H. Moldenhauer, and Michael G. Turnbull voting to approve; one Board member not participating (vacant seat))

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

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

ATTESTED BY: _____
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: NOVEMBER 25, 2009

THE STAY FORMALLY ORDERED HEREIN BECAME FINAL AND EFFECTIVE UPON THE RECORDATION OF THE BOARD'S VOTE TO GRANT THE STAY ON NOVEMBER 17, 2009.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 04-14A**

Z.C. Case No. 04-14A

Florida Rock Properties, Inc.

(Two-Year Time Extension @ 100 Block of Potomac Avenue, S.E.)

(Square 708, Lots 810, 811 and 812)

November 9, 2009

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on November 9, 2009. At the meeting, the Commission approved a request from Florida Rock Properties, Inc. (the "Applicant") for a time extension for an approved second-stage planned unit development ("PUD") and related map amendment for property consisting of Lots 810, 811, and 812 in Square 708 (the "Property"), pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. By Zoning Commission Order No. 04-14 ("Order No. 04-14"), the Commission approved a second-stage PUD and related zoning map amendment for the Property to the C-3-C Zone District. The approved PUD authorized the construction of a mixed-use project of office, retail, residential, and hotel uses, having multiple vistas and views to and from the Anacostia River to the southeast and south and the Washington Nationals' Baseball Stadium ("Stadium") to the north (the "Project"). The Project was created in close consultation with various offices and departments of the District of Columbia government – including the Office of Planning ("OP") and the District Department of Transportation ("DDOT") – as well as with community representatives, in order to enhance the river front, complement the Stadium, and provide for pedestrian activity and excitement. The Project includes a total of 1,115,400 square feet of gross floor area, including 569,623 square feet devoted to residential and hotel uses and 545,777 square feet devoted to commercial uses, including a minimum of 80,000 square feet of gross floor area devoted to retail use. Maximum heights for the components of the building range from 92 feet to 130 feet.
2. Order No. 04-14 became effective upon publication in the *D.C. Register* ("DCR") on June 27, 2008. This order approved the Project to be constructed in four phases, with the requirement that the Applicant file for a building permit for Phase I of the Property ("Phase I"), which includes the proposed office building and open space on the east end of the Project, no later than June 27, 2010. Construction of Phase I must begin no later than June 27, 2011.
3. By letter dated and received by the Commission on September 25, 2009, the Applicant filed a request to extend the validity of the PUD approval for a period of two years. The request, if approved, would require that an application for a building permit must be filed for Phase I of the Project no later than June 27, 2012, and construction of Phase I must be

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started no later than June 27, 2013. The Applicant's request was supported by exhibits setting forth details of the Applicant's inability to obtain project financing for at least Phase I of the Project at this time, as discussed in Finding Nos. 5 and 6.

4. The Applicant submitted evidence that the Project has experienced delay beyond the Applicant's control. Notwithstanding the delays experienced by the Applicant in commencing the Project, the Applicant has taken many steps since the effective date of Order No. 04-14 to move the Project forward, including the following:
 - (a) Preparing an ALTA Survey and processing with the D.C. Office of the Surveyor a subdivision of the Property consolidating multiple lots on multiple squares into a single lot of record in a single square (Lot 14, Square 708);
 - (b) Creating on the single lot of record, Assessment and Taxation Lots to correspond to the approved phasing for the Project;
 - (c) Contributing \$800,000 to the District of Columbia for the construction, installation, and/or ongoing maintenance of the adjacent Diamond Teague Park, such contribution having been made in coordination with the Deputy Mayor for Planning and Economic Development in November 2008, in accordance with Condition No. 8 of Order No. 04-14;
 - (d) Recording the required PUD Covenant in the Land Records for the District of Columbia on September 4, 2008, as required by Condition No. 14 of Order No. 04-14 and § 2409.3 of the Zoning Regulations;
 - (e) Continuing participation in public meetings for the South Capitol Street Improvement Project regarding the future improvements to South Capitol Street and the relocation of the Frederick Douglass Bridge (the "Bridge");
 - (f) Working with DDOT to effect the land exchange required to accommodate the new Bridge realignment and roadway expansion that will facilitate future development of Phase III and Phase IV of the Project in accordance with the PUD;
 - (g) Advancing the approved designs for Phase I and Phase II of the Project with the preparation of architectural schematic drawings for those phases as a precursor to preparation of drawings for building permitting purposes; and
 - (h) Marketing the Project and monitoring market conditions in near Southeast D.C.
5. The real estate market has been subject to, and continues to suffer from, severe financing, sales, and leasing impediments as a result of the severe economic crisis. The present condition of the real estate market has rendered it impossible for the Applicant to secure

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sufficient financing to commence development of Phase I of the Project, despite the Applicant's good faith efforts. After an intensive selection process, the Applicant retained the commercial real estate firm of Jones Lang LaSalle to solicit development expertise and equity commitments from major developers in the Metropolitan Washington D.C. market. Based on the letter from Jones Lang LaSalle submitted with the application, the Applicant's search did not result in any candidate that was willing to commit to a schedule for development of Phase I that would move Phase I of the Project forward within the current two-year approval period of the PUD that expires in June 2010, or willing to commit to provide equity funding for development of Phase I due to market conditions.

6. According to Jones Lang LaSalle's Real Estate Investment Banking ("JLL-REIB") group's Financing Opinion Letter ("Opinion Letter"), which was also submitted with the application, without equity funding for Phase I given the current economic climate, the Applicant would be unable to secure debt financing for the design, construction, and delivery of Phase I. According to the Opinion Letter, no lender contacted by JLL-REIB would agree to provide loan terms to the Applicant for Phase I of the Project without evidence of equity funding commitments and pre-leasing.
7. As supported by the evidence submitted by the Applicant, the Applicant is not able to secure project financing to proceed with Phase I of the Project within the approved period of Order No. 04-14, despite the Applicant's diligent, good faith efforts and based on changes in the economic and market conditions that are beyond the Applicant's control.
8. The Applicant served a copy of the request on Advisory Neighborhood Commission ("ANC") 6D, the only party to the case. ANC 6D submitted a letter dated October 22, 2009 in support of the requested extension.
9. Based on the initial and supplemental reports of OP and the photographs included therein, OP noted that there was no detrimental change in the condition of the Property since approval of the PUD that would indicate that the application should not be granted and that granting the requested extension will assist the Applicant in moving forward with this important waterfront project. The Commission concurs with these recommendations.
10. Since the Applicant has demonstrated good cause with substantial evidence pursuant to § 2408.11(a) of the Zoning Regulations, the Commission finds that the request for the two-year time extension of the approved PUD should be granted.

CONCLUSIONS OF LAW

1. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Commission based

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its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11. (11 DCMR § 2408.10.) Section 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the Project, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

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

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DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year time extension of the second-stage PUD approved in Zoning Commission Case No. 04-14. The second-stage PUD approved by the Commission shall be valid until June 27, 2012, within which time an application shall be filed for a building permit for Phase I of the Project, as specified in § 2409.1 of the Zoning Regulations. Construction of Phase I must commence no later than June 27, 2013.

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

On November 9, 2009, upon the motion made by Chairman Hood, as seconded by Vice Chairman Keating, the Zoning Commission **ADOPTED** this Order by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on December 4, 2009.