

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2010

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 51 N Street, NE., Washington, D.C., intends to issue a permit to the Architect of the Capitol to operate one (1) 149 kW emergency generator at the C Street, NW Tunnel, Washington, DC.

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

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

Comments should be addressed to:

Stephen S. Ours, P.E.
Chief, Permitting and Enforcement Branch
Air Quality Division
District Department of the Environment
51 N Street NE, 5th Floor
Washington D.C. 20002

No written comments postmarked after January 18, 2010 will be accepted.

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

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FISCAL YEAR 2010

PUBLIC NOTICE

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

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DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2010

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

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Comments should be addressed to:

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

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DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2010

PUBLIC NOTICE

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Equipment Location	Address	Equipment Size	Model Number	Serial Number	Fuel
McMillan WTP	2500 1 st St. NW Washington, DC 20001	600 kW (1135 hp)	KTA38-G1 Cummins	95981-01	Diesel
McMillan WTP	2500 1 st St. NW Washington, DC 20001	600 kW (1135 hp)	KTA38-G1 Cummins	95981-03	Diesel
McMillan WTP	2500 1 st St. NW Washington, DC 20001	600 kW (1135 hp)	KTA38-G1 Cummins	95981	Diesel
Dalecarlia WTP (Admin Building)	5900 MacArthur Boulevard, NW Washington, DC	125 kW (186 hp)	J125UC SDMO	J125UC06018862	Diesel
Dalecarlia WTP (Admin Building)	5900 MacArthur Boulevard, NW Washington, DC	30 kW (50 hp)	Kohler Generators	123598	Natural gas

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

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

Comments should be addressed to:

Stephen S. Ours
Chief, Permitting and Enforcement Branch
Air Quality Division
District Department of the Environment
51 N Street, NE, 5th Floor
Washington D.C. 20002

No written comments postmarked after January 18, 2010 will be accepted.

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

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2010

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 51 N Street, NE, Washington, D.C., intends to issue a permit to the Architect of the Capitol, to operate the following generators, located in Washington D.C.

Equipment Location	Address	Equipment Size	Model Number	Serial Number	Fuel
Supreme Court Bldgs. & Grounds	One 1 st St. NE Washington, DC 20543	750 kW (1135 hp)	Cummins DFGE-5729497	I050826808	Diesel
Supreme Court Bldgs. & Grounds	One 1 st St. NE Washington, DC 20543	40 kW (64 hp)	Detroit 40DSEJB	2065998	Diesel
Supreme Court Bldgs. & Grounds	One 1 st St. NE Washington, DC 20543	350 kW (536 hp)	Caterpillar SR4	9GF00759	Diesel
4700 Shepherd Parkway, SW, Washington, DC 20032	4700 Shepherd Parkway, SW, Washington, DC 20032	560kW (750 hp)	Cummins KTTA19G2	37134991	Diesel

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

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

Comments should be addressed to:

Stephen S. Ours
Chief, Permitting and Enforcement Branch
Air Quality Division
District Department of the Environment
51 N Street, NE, 5th Floor
Washington D.C. 20002

No written comments postmarked after January 18, 2010 will be accepted.

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

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
December 1, 2009	1115 O Street, NW	801	1080E	Workshop building
December 1, 2009	2538 44th Street, NW	36	1341	2-story building
December 7, 2009	64 New York Avenue, NE	854	669	2-story building
December 7, 2009	64 New York Avenue, NE	854	669	2-story building
December 10, 2009	414 Eastern Avenue, NE	17	5260	Apartment building
December 10, 2009	400 Eastern Avenue, NE	19	5260	Apartment building

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 09-20
(Map Amendment @ Square 3594, Lot 5)
December 8, 2009**

THIS CASE IS OF INTEREST TO ANC 5B

On December 2, 2009, the Office of Zoning received an application from VASUDAV, Inc. (dba Baywood Hotels), the "Applicant," for approval of a map amendment for the above-referenced property.

The property that is the subject of this application consists of Square 3594, Lot 5 in northeast Washington, D.C. (Ward 5), located to the east of the intersection of New York Avenue, N.E. and Penn Street, N.E. The property is currently zoned C-M-1. The Applicant proposes a map amendment to zone the property to C-3-C. The Applicant is proposing the rezoning in order to replace the existing two-story motel with an eight-story hotel.

The C-M-1 Zone District permits development of low bulk commercial and light manufacturing uses to a maximum floor area ratio ("FAR") of 3.0, and a maximum height of three stories/40 feet with standards of external effects and new residential prohibited. A rear yard of not less than 12 feet shall be provided for each structure located in an Industrial District. No side yard shall be required on a lot in an Industrial District, except where a side lot line of the lot abuts a Residence District. Such side yard shall be no less than eight feet.

The C-3-C Zone District permits matter-of-right development for major business and employment centers of medium/high-density development, including office, retail, housing, and mixed uses to a maximum lot occupancy of 100%, a maximum FAR of 6.5 for residential and for other permitted uses, and a maximum height of 90 feet. Rear yard requirements are 12 feet; one family detached dwellings follow R-1 side yard requirements, one family semi-detached dwellings follow R-2 side yard requirements.

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

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

Application No. 18001 of Edward A. Hoyt, pursuant to 11 DCMR § 3103.2, for a variance from the lot area and lot width requirements under section 401, a variance from the side yard requirements under section 405, and a variance from the one-space parking requirement under subsection 2101.1, to allow the construction of a new one-family detached dwelling in the R-1-B District at premises 5013 Belt Road, N.W. (Square 1756, Lot 64).¹

HEARING DATE: December 1, 2009

DECISION DATE: December 8, 2009

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 and 23).

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. The ANC filed a report, dated December 1, 2009, in support of the application. The ANC's report indicated that ANC 3E approved the resolution by an unanimous vote in support of the application at a regularly scheduled and properly noticed meeting held on November 5, 2009, at which a quorum was present. (Exhibit 30). The Office of Planning (OP) submitted a timely report recommending approval of the application. (Exhibit 27). Letters of support signed by 8 neighbors (Exhibit 8) and two other neighbors (Exhibit 18), as well as a signed agreement between the Applicant and the two adjacent residents (Exhibit 25) were submitted for the record.

¹ The Applicant amended the application to add the variance relief from the parking requirements under subsection 2101.1. (Exhibit 23). At the hearing on December 1, 2009, the Board completed public testimony but requested additional information to supplement the record. The Applicant, in response to the Board's request, submitted a supplemental filing that revised the site plan, including eliminating the curb cut and revising or clarifying the side yard dimensions. (Exhibit 31).

BZA APPLICATION NO. 18001

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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 the lot area and lot width requirements under section 401, from the side yard requirements under section 405, and from the one-space parking requirement under subsection 2101.1. 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 the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 401, 405, and 2101.1, 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.

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 31– Revised Plans) be **GRANTED**.

VOTE: **3-0-2** (Shane L. Dettman, Michael G. Turnbull, Meridith H. Moldenhauer to APPROVE. Two other Board members 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: DEC 11, 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.

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

BZA APPLICATION NO. 18001

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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. 18004 of Joan E. Aghevli, pursuant to 11 DCMR §§ 3104.1 and 1515.1, for a special exception from section 223, not meeting the lot occupancy requirement (section 403) and a special exception from the lot occupancy requirements under subsection 1513.1 (Tree and Slope Protection Overlay), to allow a one-story addition to an existing one family detached dwelling in the TSP/R-1-B District at premises 3416 Garfield Street, N.W, (Square 1941, Lot 37).

HEARING DATE: December 8, 2009

DECISION DATE: December 8, 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) 3C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. ANC 3C 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.

BZA APPLICATION NO. 18004

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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. 24 Plans & Elevations) be **GRANTED**.

VOTE: **3-0-2** (Michael G. Turnbull, Meridith H. Moldenhauer and Shane L. Dettman to Approve. Marc D. Loud not present not voting, and the third Mayoral position vacant)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: December 9, 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,

BZA APPLICATION NO. 18004

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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 18006 of Donna Michelle Williams, pursuant to 11 DCMR § 3104.1, for a special exception to allow an accessory basement apartment within an existing one-family detached dwelling under subsection 202.10, in the R-1-B District at premises 3100 26th Street, N.E. (Square 4289, Lot 15).

HEARING DATE: December 8, 2009

DECISION DATE: December 8, 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) 5B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5B, which is automatically a party to this application. ANC 5B did not participate in 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 subsection 202.10. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, and 202.10, 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 § 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

BZA APPLICATION NO. 18006

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conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 10 Plan) be **GRANTED** subject to the following **CONDITION**:

1. No more than six (6) persons shall occupy the accessory apartment.

VOTE: **3-0-2** (Shane L. Dettman, Michael G. Turnbull and Meridith H. Moldenhauer to Approve. Marc D. Loud not present not voting, and the third Mayoral position vacant)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: December 9, 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.

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

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT

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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.

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

Application No. 18007 of Sibley Memorial Hospital, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the floor area ratio requirements under subsection 402.4, and a special exception and variance from the roof structure provisions (height and location of multiple roof structures) under subsections 400.7 and 411.11, to allow the expansion of an existing hospital, including a new eight-story addition containing a new patient pavilion, emergency department and cancer center, in the R-5-A District at premises 5255 Loughboro Road, N.W. (Square N-1448, Lot 26).

HEARING DATE: December 8, 2009
DECISION DATE: December 8, 2009 (Bench Decision)

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6).

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) 3D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. ANC 3D filed a report, dated December 4, 2009, together with a resolution in support of the application with conditions. The ANC's report indicated that the ANC considered and voted to support the application at a regularly scheduled, duly noticed meeting at which a quorum was present.¹ (Exhibit 33). The Office of Planning (OP) filed a timely report recommending approval of the application. (Exhibit 32). The District Department of Transportation (DDOT) filed a preliminary report indicating that DDOT had received the Applicant's complete transportation study on November 16, 2009, but had not had an opportunity to complete its review of the study. DDOT requested that the Board leave the record open until January 5, 2010 to

¹ The ANC, by letter dated October 21, 2009, requested the Board's approval so it could file its report by December 4, 2009. (Exhibit 28). At the hearing the Board waived its rules and accepted the ANC's report into the record.

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receive DDOT's report.² (Exhibit 31). Letters of support from The Palisades Association (Exhibit 35) and the Spring Valley West Homes Association (Exhibit 27) were submitted for the record. A letter expressing concern but also conditioned support of the project was submitted by Neighbors United Trust. (Exhibit 34).

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 floor area ratio requirements under subsection 402.4, and a variance from the roof structure provisions (height and location of multiple roof structures) under subsections 400.7 and 411.11. 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 the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 402.4, 400.7 and 411.11, 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.

In addition, 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 subsections 400.7 and 411.11. 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, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 400.7 and 411.11, 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 § 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

² The Board considered, but rejected, DDOT's request to hold the record open, in part because the Applicant had already had numerous discussions and reviewed the transportation issues regarding the hospital with DDOT and the neighbors in the related PUD case before the Zoning Commission (ZC Case No. 05-42).

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application (pursuant to Exhibit 29B – Plans) be **GRANTED AS CONDITIONED:**

1. Sibley shall construct a vegetated green roof with a minimum area of 12,281.88 square feet above the Cancer Center to compensate for the loss of the same amount of greenspace that will occur as a result of the proposed new construction.
2. Sibley shall use light-colored materials for the roof structures and mechanical systems screen, similar in color to the roof structure on the medical office building.
3. Following the completion of construction of the new intersection at Dalecarlia Parkway and Loughboro Road and the new medical office building, Sibley shall provide ANC 3D with quarterly reports on its efforts to address hospital-related traffic issues.
4. Sibley shall provide a letter to WMATA and DDOT in support of the rerouting of Metrobuses off the uphill stretch of Loughboro Road and rerouting the buses to the bus layovers located on westbound Loughboro Road via Little Falls Road.
5. Sibley shall provide a letter to MPD and DDOT in support of speed cameras around the hospital campus, including on northbound MacArthur Boulevard.
6. Sibley shall post schedule and pickup/drop-off location information for its shuttle to the Friendship Heights Metrorail Station on the Palisades Citizens' Association website and monthly in the *Northwest Current*.

VOTE: 3-0-2 (Meridith H. Moldenhauer, Shane L. Dettman, Michael G. Turnbull to APPROVE. Two other Board members 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: DEC. 11, 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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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.

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. 17933 of HSC Foundation, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception from the rear yard requirements under subsection 774.2, and a variance from the parking requirements under subsection 2101.1, to allow the renovation and expansion of a building for office use in the C-3-C District at premises 2013 H Street, N.W. (Square 101, Lot 874).

HEARING DATE: June 16, 2009

DECISION DATE: June 16, 2009

DECISION AND ORDER

This self-certified application was submitted on January 29, 2009 by the HSC Foundation (“Applicant”), owner of the property that is the subject of this application (“subject property”). The application requests special exception and variance relief necessary to permit the renovation of an existing row dwelling and carriage house and the addition, between them, of a new seven-story office building.

In Zoning Commission Order No. 08-19, the Zoning Commission granted the Applicant a map amendment to change the zoning of the subject property from R-5-D to C-3-C, facilitating the use of the subject property for office purposes and allowing increased density. *The HSC Foundation – Map Amendment at Square 101, Lot 874*, 56 DCR 2795 (2009). Exhibit No. 23, Attachment B.

The Board of Zoning Adjustment (“BZA” or “Board”) held a hearing on the application on June 16, 2009 and, at the conclusion of the hearing, voted 3-0-2 to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated February 2, 2009, the Office of Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 2A, the ANC within which the subject property is located, Single Member District 2A01, and the Council Member for Ward 2. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *D.C. Register*, and sent such notice to the Applicant, ANC 2A, and all owners of property within 200 feet of the subject property.

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

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

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Request for Party Status. ANC 2A was automatically a party to this case and submitted to the Board a copy of its resolution filed in Zoning Commission Case No. 08-19, wherein the Commission changed the zoning of the subject property. No ANC filing specifically addressing this application was received by the Board.

The West End Citizen's Association ("WECA") was granted opposition party status by the Board. Its representative testified against the granting of the parking variance, but stated that WECA took no position on the special exception relief requested.

Applicant's Case. A representative of the Applicant testified at the hearing, as did the Applicant's architect, transportation engineer, and land use planner. The latter three individuals were accepted as experts by the Board. The Applicant's representative introduced the project and each of the experts addressed relevant aspects of the special exception and variance tests.

Government Reports. The Office of Planning submitted a report to the Board on June 9, 2009 recommending approval of the application. OP addressed the provisions of the requested special exception, as well as the three prongs of the area variance test, and opined that they were all met. OP also noted that although the application had been referred to DDOT, that agency had not provided any comments. (Exhibit No. 24.)

ANC Report. As noted, ANC 2A did not submit a written report in direct response to the application filed. Instead, the ANC submitted to the Board a copy of the resolution it had filed with the Zoning Commission map amendment case noted above and drafted prior to the filing of this application. The only portion of that resolution that arguably relates to this case is the ANC statement that it "will oppose any proposed variance from the parking space requirements, when requested." (Exhibit No. 26.) The remainder of the resolution objected to the additional density that would result from the rezoning.

FINDINGS OF FACTThe subject property and the surrounding neighborhood

1. The subject property is located at address 2013 H Street, N.W., in a C-3-C zone district, in Square 101, Lot 874.
2. The property is a narrow lot, 36 feet wide, by approximately 150 feet long, with an area of approximately 5,373 square feet.
3. The property is developed with a three-story brick row dwelling at the front of the site, facing H Street, N.W., and a two-story brick carriage house at the rear of the site.
4. The row dwelling and carriage house were both constructed circa 1888.

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5. At the time of the hearing on this application, the creation of the “George Washington University Campus Historic District” was pending and the buildings on the subject property had been proposed as contributing buildings to the future Historic District.
6. The property is within the Foggy Bottom campus of George Washington University (“GWU”) and the surrounding neighborhood is comprised of commercial and institutional, mostly GWU, uses.
7. Immediately behind the property, to its north, is an 11-story commercial building; to the south, across H Street, is a landscaped open space which is part of GWU; to the east is a surface parking lot; and to the west is an undeveloped lot used as pedestrian access to the building to the north.
8. The properties to the north and east of the subject property are both zoned C-3-C.
9. GWU currently plans to construct a 90-foot building on the site of the surface parking lot immediately to the east of the property and a 65-foot building on part of the open space to the south of the property.

The Applicant’s proposal and the need for relief

10. The Applicant, a non-profit organization, proposes to retain and renovate portions of both the existing row dwelling and carriage house and to add a seven-story-plus-cellar addition connecting them.
11. The three pieces – row dwelling, carriage house, and central addition – would be integrated into one, unified building to house the Applicant’s headquarters offices.
12. The new building that would result from the Applicant’s proposal meets all the zoning parameters for the C-3-C district, except the requirements for a rear yard and for on-site parking.
13. The total area of the proposed building would be approximately 27,322 square feet, with a floor area ratio of 5.09. Design modifications may increase the area, but not beyond 30,000 square feet.
14. Section 774.1 of the Zoning Regulations would require a rear yard of 17 feet, 8 inches behind the proposed 84-foot, 10-inch high building.
15. The carriage house, which will be incorporated into the new building, is set back from the rear property line only 2 feet, 5 inches, necessitating a waiver of the rear yard requirement, as permitted by 11 DCMR § 774.2.
16. Section 2101.1 of the Zoning Regulations requires 13 on-site parking spaces for the proposed office use. As a result of design changes, the parking requirement may increase to

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14 spaces,¹ but none will be provided, necessitating a variance from the parking requirement.

Waiver/Special Exception with respect to rear yard requirements

17. The Board is authorized to waive the rear yard requirements in accordance with the special exception standards of § 3104, provided that the requirements of §§ 774.3 through 774.6 are met.
18. Abutting the rear lot line of the subject property is an unimproved open space, approximately 20 feet wide, and encumbered with a perpetual nonexclusive easement to allow vehicles and pedestrians to access the rear of the subject property and the property to its north.
19. Due to this 20-foot open space, and the 12-foot, 5-inch setback of the south wall of the 11-story building to the north of the property, the closest portion of that building is more than 30 feet from the rear lot line of the subject property.
20. The rear of the carriage house is 2 feet, 5 inches from the rear lot line, but the building addition, (*i.e.*, above the second floor) will be set back from that line 4 feet, 4 inches.
21. The lot occupancy of the proposed building will be approximately 86%, although 100% is permitted in this C-3-C zone district.
22. Neither the proposed building nor the building to its north contains any habitable rooms.
23. No loading facilities are required for the proposed building as it is less than 30,000 square feet in area. 11 DCMR § 2201.1.
24. Necessary delivery and trash removal functions will occur at the rear of the building in the area of the open space easement.
25. The proposed project will provide no parking and variance relief has been requested.

The parking variance*Exceptional condition*

26. The subject property is long and narrow, resulting in a comparatively small street frontage.
27. The property is only one of a few sites in its area which has not been consolidated into a larger lot.

¹The Applicant's traffic expert states that 16 parking spaces are required, but the discrepancy – whether 13, 14, or 16 -- is not great and therefore does not significantly change the magnitude of the variance requested or its impact, if any, on the public good.

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28. The existing row dwelling and carriage house occupy a significant portion of the property's front and rear lot lines, reducing the area available for maneuvering and parking vehicles.
29. Both existing buildings have a high potential for historic designation and the Applicant has worked with the D.C. Historic Preservation Office to retain their historical nature.

Practical difficulties

30. At 36 feet wide, the property is not wide enough to accommodate the required 20-foot wide drive aisle and 13 (or 14) 9 x 19-foot parking spaces, whether on grade or below ground. 11 DCMR §§ 2117.5 & 2115.1. This remains true even if smaller compact spaces and angled parking, requiring only a 16-foot wide drive aisle, are used. 11 DCMR §§ 2117.6 & 2115.3.
31. It would also be infeasible for a project of this small footprint to provide multiple-level below-ground parking because there is no room for separate ingress and egress points.
32. Providing parking would likely result in the need to demolish parts of the buildings on the property, which the Applicant is working to keep intact due to their historic significance.

No substantial detriment to the public good

33. The subject property is located approximately three blocks from both the Foggy Bottom and Farragut West Metro Stations and is well-served by Metrobus routes.
34. At the time of the hearing, there were approximately 70 monthly parking leases available in parking garages within a three-block radius of the subject property. Exhibit No. 23, Attachment G.
35. Hourly/daily parking is also available in these garages and metered on-street parking is also available on H Street and 21st Street in the vicinity of the property. Exhibit No. 23, Attachment G.
36. The Applicant will provide complimentary Smartrip cards to each of its employees at initial occupancy.
37. The Applicant will also provide complimentary annual Smart Bike memberships to its employees at initial occupancy and will provide a showering and changing facility on-site.
38. The Applicant's current point-of-contact for dissemination of information concerning alternative transportation options will continue in this role for the Applicant, as well as for all tenants of the new building on the subject property.
39. The Applicant's proposed office use is a permitted use in this C-3-C zone and is harmonious with the institutional and commercial uses surrounding the subject property.

BZA APPLICATION NO. 17933**PAGE NO. 6****CONCLUSIONS OF LAW**Waiver/Special Exception relief

Pursuant to § 774.2 of the Zoning Regulations, the Board may waive the rear yard requirements for a C-3-C zone district in accordance with the requirements of § 3104 for special exceptions, provided certain standards, set forth in §§ 774.3 through 774.6, are met. In order to waive the rear yard requirements then, the Board must find that both the special exception test and the further standards are met.

Generally, 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. 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)).

In order to comply with the rear yard requirement, the Applicant would likely have to demolish the carriage house, as it is currently set back 2 feet, 5 inches from the rear lot line of the subject property. This would result in the loss of a historically significant building, a result that can be avoided by incorporating the carriage house into the new project and granting the rear yard waiver.

The reduction of the size of the rear yard on the subject property will have no detrimental effect on Zoning Regulations, Zoning Maps, or on the use of neighboring property. A waiver of the rear yard in its entirety was clearly presumed compatible with the C-3-C zone district by the Zoning Commission when it enacted § 774.2 allowing for such a waiver pursuant to the special exception test. In this case, a small rear yard of 2 feet, 5 inches will be retained, abutting a 20-foot wide easement area. This easement is a perpetual easement, resulting in a permanent retention of 20 feet of open space behind the subject lot. With these 20 feet, plus the 2-foot, 5-inch rear yard, and the 12-foot, 5-inch setback of the building to the north of the subject lot, there is over 30 feet of open area between the closest portion of the building to the north and the property’s rear lot line. This open space permits the entrance of light and air and avoids an overcrowded look and feel.

The application must also comply with §§ 774.3 through 774.6.² Section 774.3 mandates that

²Only §§ 774.3 and 774.5 had to be met by the Applicant in this case. Section 774.4 concerns habitable rooms, of which there are none involved in this application, and § 774.6 provides direction to the Board, not the Applicant.

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windows in the new building be sufficiently separated from those in other buildings to provide light and air and to protect privacy. As explained above, there is sufficient open space at the rear of the new building to provide light and air and protect privacy. The windows of the new construction will be set back from the rear lot line 4 feet, 4 inches, approximately 2 feet further away from the rear lot line than the carriage house, creating even more of a separation from the third floor up.

Section 774.5 requires that the new building provide for adequate off-street service functions, including loading and parking. No parking will be provided, and a variance has been requested. The building has no loading requirement under the Zoning Regulations because it is less than 30,000 square feet in area. 11 DCMR § 2201.1. The open area behind the building will, however, provide space for necessary office deliveries and trash removal.

The Board concludes that a reduction of the rear yard behind the subject building will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps. The reduced-size rear yard will also not adversely affect the use of neighboring property as there is sufficient open area behind the building to allow service functions and to protect light, air, and privacy.

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 variance, therefore, it 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 substantially impair the public good or the intent or integrity of the Zone Plan and Regulations. The subject property is long and narrow with a concomitantly narrow street frontage. Development of the property is further complicated by the presence of a potentially historically significant building at either end. There is no surface space on the property to accommodate

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parking spaces and it is infeasible to provide below-grade parking, due to both the small size of the property and the possible negative effects on the existing buildings.

The property, at 36 feet wide, is simply not wide enough to fit a zoning-compliant drive aisle and 13 or 14 parking spaces. The smallest parking space permitted by the Zoning Regulations is a compact space, which must be 8 feet wide by 16 feet long. 11 DCMR § 2115.3. Two of these small spaces, plus the required 20-foot drive aisle take up the entire 36-foot width of the property. 11 DCMR § 2117.6. Even with angled parking, and a permitted drive aisle width of 16 feet, there is still insufficient space on the property to provide the requisite parking. *Id.* Moreover, compact spaces must be placed in groups of at least five contiguous spaces, totaling 40 feet in width – impossible on this narrow 36-foot wide property. 11 DCMR § 2115.4.

A lack of parking on the property itself is mitigated by the large number of garages in the vicinity. The Applicant's traffic expert contacted 15 public parking garages, all within a three-block radius of the subject property. Nine of these offer monthly leases to the public, and approximately 70 of these leases were available at the time of the expert's survey, in May of 2009. Exhibit No. 23, Attachment G. Such monthly leases could be used by individuals who work at the subject property. Twelve of the surveyed garages offer hourly/daily parking for public use, which would accommodate visitors to the subject property. *Id.* There are also 79 metered on-street parking spaces within one or two blocks of the subject property. *Id.* All of these spaces more than accommodate the 14 spaces required for the new building on the property.

Not only is there sufficient parking in the immediate area, but the subject property is located approximately three blocks from two Metro Stations – Foggy Bottom and Farragut West. The property is also well served by Metrobus routes.

To further mitigate any impact of the lack of on-site parking, the Applicant has agreed to several transportation demand management strategies, set forth at Findings of Fact 36-38, and which are also conditions to this Order.

The Board concludes that the application meets all three prongs of the area variance test. The subject property's exceptional conditions render impossible, and certainly infeasible, the provision of the required parking. No substantial detriment to the public good or to the intent and integrity of the Zoning Regulations and Zoning Maps will occur because of the substantial amount of parking available in the area, the proximity to multiple forms of public transportation, and the mitigating steps to be taken by the Applicant.

Great weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these

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two entities and an explanation of why the Board did or did not find their views persuasive.

The Office of Planning recommended approval of the requested relief, and the Board agrees with this recommendation. ANC 2A, however, opposed the relief. The ANC filed a resolution with the Board which is actually an opposition to the map amendment which was before the Zoning Commission to change the subject property's zoning from R-5-D to C-3-C. Exhibit No. 26. This resolution was written before the present application was filed with the Board, but it predicts the ANC's future opposition to a parking variance request if such an application were made. However, the resolution does not explain the issues and concerns that would prompt the ANC's opposition. The remainder of the resolution concerns issues not germane to this application. In the absence of a written statement that set forth the relevant issues and concerns, there is nothing that the Board can give great weight to.

For all the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application for a waiver of the rear yard requirements in a C-3-C zone district, pursuant to §§ 3104 and 774.2, and for a variance from the parking requirement of § 2101.1, pursuant to 3103. Accordingly, it is **ORDERED** that the application, pursuant to Exhibit No. 23F, plans, is hereby **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The Applicant will designate a person on-site to be responsible for coordinating and implementing transportation demand management obligations, such as disseminating information regarding public transportation and other alternative transportation choices, to both HSC employees and other tenants of the subject building.
2. At initial occupancy, the Applicant will provide each HSC employee with a complimentary \$60.00 SmartTrip Card for Metro use.
3. At initial occupancy, the Applicant will provide each HSC employee with one complimentary annual Smart Bike membership.
4. The Applicant shall provide, within the new building, an on-site shower and changing facility available for use by all building employees who bicycle to work.

VOTE: **3-0-2** (Marc D. Loud, Shane L. Dettman, Michael G. Turnbull, to
APPROVE; two Board members (vacant seats) 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: **DECEMBER 9, 2009**

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

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

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

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. LM

LM