

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
March 10, 2010	2241 Martin Luther King, Jr., SE	906	5785	1-story building
March 11, 2010	3226 Georgia Avenue, NW	911	2892	1-story building
March 11, 2010	3224 Georgia Avenue, NW	904	2892	1-story building
March 11, 2010	3234 Georgia Avenue, NW	903	2892	2-story building
March 11, 2010	3228 Georgia Avenue, NW	98	2892	1-story building
March 17, 2010	3010 Martin Luther King, Jr., SE	800	5952	2-story building
March 18, 2010	1361 Oak Street, NW	73	2835	2-story single family dwelling

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.

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

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

VACANT: 1B06

Petition Circulation Period: **Monday, March 29, 2010 thru Monday, April 19, 2010**
Petition Challenge Period: **Thursday, April 22, 2010 thru Wednesday, April 28, 2010**

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

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

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

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 1200 First Street NE, Washington, DC, intends to issue permits to Washington Aqueduct, U.S. Army Corps of Engineers, to operate the following fuel-burning equipment, located in Washington D.C.

Equipment Location	Address	Equipment Size	Equipment Description	Fuel
Dalecarlia Water Treatment Plant (Admin Building)	5900 MacArthur Boulevard, NW Washington, DC	5,240,000 Btu/hr	Packaged Scotch heating Boilers	Natural gas / No. 2 fuel oil
Dalecarlia Water Treatment Plant (Admin Building)	5900 MacArthur Boulevard, NW Washington, DC	5,240,000 Btu/hr	Packaged Scotch heating Boilers	Natural gas / No. 2 fuel oil
Dalecarlia Water Treatment Plant (Admin Building)	5900 MacArthur Boulevard, NW Washington, DC	5,240,000 Btu/hr	Packaged Scotch heating Boilers	Natural gas / No. 2 fuel oil

The application to construct/operate the fuel-burning equipment 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
1200 First Street NE, 5th Floor
Washington D.C. 20002

No written comments postmarked after April 26, 2010 will be accepted.

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

**Notice of Availability
of the**

**“First Draft Fiscal Year 2011-2015 Consolidated Plan and
Fiscal Year 2011 Annual Action Plan for the District of Columbia”**

The Department of Housing and Community Development (DHCD) announces the release of the first draft of these documents, available to the public March 31, 2010, in order to receive public comments on the Plan and budgets to be submitted to the U.S. Dept of Housing and Urban Development (HUD) for the following federal entitlement programs:

- **Community Development Block Grant Program (CDBG)**
- **HOME Investment Partnerships Program (HOME)**
- **Emergency Shelter Grant Program (ESG)**
- **Housing Opportunities for Persons with AIDS Program (HOPWA)**

Both documents will be available for review no later than Friday, April 2, 2010, on the Department’s website www.dhcd.dc.gov and in hard copy at the Department’s offices at 1800 Martin Luther King Jr. Avenue, SE, Washington, DC 20020, at the Housing Resource Center, 1st Floor. Additionally, copies will be available at all public library branches, ANC offices, and the following community-based organizations:

**Housing Counseling
Services, Inc.**
2410 17th Street, NW
Suite 100 - (202) 667-7006

Lydia’s House
3939 South Capitol St.,
SW
(202) 373-1050

**Central American
Resources Center**
1460 Columbia Road, NW
(202) 328-9799

University Legal Services
220 I Street, NE, Suite 130
(202) 547-4747

**Latino Economic
Development Corp.**
2316 18th Street, NW
(202) 588-5102

If you wish to provide comments for the record, please do so by mail or email by close of business Monday, May 3, 2010. Written statements should be mailed to: Leila Finucane Edmonds, Director, DHCD, Attention: Consolidated Plan Comments, 1800 Martin Luther King Jr., Ave., SE, Washington, DC 20020. Emailed comments should be submitted to DHCDEVENTS@DC.GOV with a subject line “Consolidated Plan comments.”

All comments received during the comment period will be responded to in the second draft of the FY2011-FY2015 Consolidated Plan and FY2011 Action Plan, to be noticed and released in mid-May. Following the release of the second draft of these documents, DHCD will hold a public hearing to receive additional public comments. In advance of the hearing, DHCD will provide notice in the DC Register of its details, including the availability of translation services.

For additional information, please contact Pam Hillsman at Pamela.Hillsman@dc.gov or by phone at (202) 442-7251.

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

**Judicial Tenure Commission Begins Reviews
of Judges For Senior Status**

This is to notify members of the bar and the general public that the Commission is reviewing the qualifications of Judge Frank E. Schwelb of the District of Columbia Court of Appeals, and Judge Leonard Braman of the Superior Court of the District of Columbia both of whom have requested a recommendation for reappointment as a Senior Judge.

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

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

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

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

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

All communications should be mailed, or faxed, by **May 7, 2010**, and addressed to:

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

The members of the Commission are:

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

BY: /s/ Gladys Kessler
Chairperson

JUSTICE GRANTS ADMINISTRATION

FY 2011 NOTICE OF FUNDING AVAILABILITY

Published March 26, 2010

FY 2011 Justice Assistance Grant Recovery Act: Intervention and Diversion Program: The District of Columbia Justice Grants Administration announces funds to support service programs that prevent or reduce violent offending among at-risk youth and adults and programs or system improvements that expand and strengthen alternatives to detention, prosecution, and residential placement/prison for youth and adults. Applicants will need to identify concrete numerical benchmarks for reducing the number of youth and/or adults involved with such systems; identify detailed eligibility criteria and a referral process for achieving such reductions; and are strongly encouraged to include letters of support from the District and federal agencies as appropriate to ensure institutional buy-in for proposed activities. Applicants are also encouraged to propose evidence-based service strategies for these intervention and diversion activities, and to include a formal evaluation in their funding proposal.

Eligibility: Community-based organizations, District and federal agencies that have the demonstrated abilities to meet the funding priorities, outputs, outcomes, and required activities identified in the Request for Applications (RFA), and who are able to commit to complying with all JGA financial, administrative, and programmatic regulations and expectations.

Request for Applications Available: Friday, April 9, 2010 at <http://jga.oca.dc.gov>

Application Deadline: 5:00 p.m. on Friday, May 21, 2010.

Funds: \$1,500,000 is available to support up to six (6) awards

FY 2011 Justice Assistance Grant Recovery Act: Evidence-Based Residential Service, Discharge and Re-entry Service Demonstration Projects: The District of Columbia Justice Grants Administration announces funds to support demonstration projects that pilot evidence-based strategies and services for reducing recidivism rates and achieving pro-social outcomes for youth and adult offenders returning to the District of Columbia after a period of incarceration. Demonstration projects can focus on residential services, discharge planning, service coordination, supervision, and/or re-entry services, with a preference for projects that focus on high-risk offenders and that link multiple phases of an offender's re-entry. Applicants are strongly encouraged to submit proposals collaboratively that include at least two of the following partners: a residential facility/custody entity; service provider(s); supervision entity if appropriate; and a technical assistance provider that can offer training and support around the implementation of evidence based practices and/or assist with required evaluation activities.

Eligibility: Community-based organizations, District and federal agencies that have the demonstrated abilities to meet the funding priorities, outputs, outcomes, and required activities identified in the Request for Applications (RFA), and who are able to commit to complying with all JGA financial, administrative, and programmatic regulations and expectations.

Request for Applications Available: Friday, April 15, 2010 at <http://jga.oca.dc.gov>

Deadline: 5:00 p.m. on Friday, May 28, 2010.

Funds: \$1,500,000 is available to support up to six (6) awards

FY 2011 Justice Assistance Grant Recovery Act: Technology, Electronic Information

Sharing, and Evaluation Capacity Improvement Program: The District of Columbia Justice Grants Administration announces funds to build organizational capacity to employ cutting-edge technology; capture, store and share electronic information; or conduct evaluations that will help the District to better prevent crime. Funds may be used to improve case processing; improve systems coordination and information sharing; and provide outcome data on program operations and performance that can help the District to better determine how to invest criminal justice resources. Applications involving collaboration or information sharing among multiple stakeholders should indicate involvement of all partners in proposal development, planning and implementation, and should include applicable letters of commitment, memoranda of understanding or other proof of established partnership.

Eligibility: Community-based organizations, District and federal agencies that have the demonstrated abilities to meet the funding priorities, outputs, outcomes, and required activities identified in the Request for Applications (RFA), and who are able to commit to complying with all JGA financial, administrative, and programmatic regulations and expectations.

Request for Applications Available: Friday, April 9, 2010 at <http://jga.oca.dc.gov>

Deadline: 5:00 p.m. on Friday, May 21, 2010.

Funds: \$1,000,000 is available to fund up to five (5) awards

FY 2011 Title V Community Prevention/Justice Assistance Grant: Family Intervention and Support Services Program (PINS):

The District of Columbia Justice Grants Administration announces funds to support a capacity-building and funding partnership with Fair Chance to strengthen the service delivery, internal operations, and sustainability of organizations that serve at-risk youth (PINS) and their families so that they can measure and achieve improved youth development outcomes. Participants will receive intensive technical assistance and capacity building services from Fair Chance for 12 months in the areas of Strategic Planning; Fundraising; Fiscal Management; Board Development; Leadership Development; Program Evaluation; Human Resources; and Communications & Outreach. JGA funds must be used to support related service program improvements/expansion as well as capacity building around data collection and program evaluation.

Eligibility: Community-based organizations that have the demonstrated abilities to meet the funding priorities, outputs, outcomes, and required activities identified in the Request for Applications (RFA), and who are able to commit to complying with all JGA financial, administrative, and programmatic regulations and expectations.

Request for Applications Available: Friday, April 9, 2010 at <http://jga.oca.dc.gov>

Deadline: 5:00 p.m. on Friday, May 21, 2010.

Funds: \$450,000 is available to fund up to six (6) awards.

FY 2011 Enforcing Underage Drinking Laws Service and Collaboration Program:

The District of Columbia Justice Grants Administration announces funds targeted at reducing the sale/purchase and consumption of alcoholic beverages by minors and to mitigate the negative consequences of this consumption. JGA has partnered with APRA to provide coordination and

technical assistance to support a diverse array of policy, prevention interventions, compliance/enforcement, and data improvement activities around underage drinking. Applicants must propose activities for funding in one or more of these program areas and will be required to participate in the DC EUDL Community Prevention Network, which is designed to improve coordination and collaboration around the prevention of underage drinking in the District.

Eligibility: Community-based organizations and District and federal agencies that have the demonstrated abilities to meet the funding priorities, outputs, outcomes, and required activities identified in the Request for Applications (RFA), and who are able to commit to complying with all JGA financial, administrative, and programmatic regulations and expectations.

Request for Applications Available: Friday, April 15, 2010 at <http://jga.oca.dc.gov>

Deadline: 5:00 p.m. on Friday, May 28, 2010.

Funds: \$648,000 is available to fund multiple awards.

FY 2011 Juvenile Accountability Block Grant: Juvenile Justice Accountability Program:

The District of Columbia Justice Grants Administration announces funds to focus on effective juvenile justice system improvements to reduce juvenile offending through accountability-based programs. Funds may be used for staff hiring, training, accountability-based programs, and re-entry programs. Community-based organizations must partner with government agencies to provide services.

Eligibility: District or federal agencies, or community-based organizations partnering with District or federal agencies, that have the demonstrated abilities to meet the funding priorities, outputs, outcomes, and required activities identified in the Request for Applications (RFA), and who are able to commit to complying with all JGA financial, administrative, and programmatic regulations and expectations.

Request for Applications Available: Friday, April 15, 2010 at <http://jga.oca.dc.gov>

Deadline: 5:00 p.m. on Friday, May 28, 2010.

Funds: \$280,000 is available to fund up to four (4) awards.

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

Application No. 17967 of So Others Might Eat (SOME), pursuant to 11 DCMR § 3103, for a variance from the nonconforming structure provisions of § 2001.3, and pursuant to 11 DCMR § 3104, for a special exception from the roof structure requirements under § 411, to allow the Applicant to renovate and make an addition to an existing nonconforming building, located at 1667 Good Hope Road, S.E., in the C-2-A Zone District (Square 5765, Lot 894).

HEARING DATE: September 15, 2009
DECISION DATE: September 15, 2009

DECISION AND ORDER

The owner of the subject property, “So Others Might Eat” (SOME or the Applicant), filed an application with the Board of Zoning Adjustment (the Board) on May 11, 2009 for special exception and variance relief. SOME seeks a variance from the nonconforming structure provisions of 11 DCMR § 2001.3 in order to renovate and construct an addition to a vacant three story apartment building, in order to provide affordable housing units to the elderly. It also seeks special exception relief under § 411.11 from the roof structure requirements of §§ 411.3, 411.5, and 411.2. Following a hearing on September 15, 2009, the Board voted to approve the application.

Preliminary Matters

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

Authorization. The Applicant authorized the law firm of Pillsbury Winthrop Shaw Pittman, LLP to represent it in all proceedings before the Board.¹ (Exhibit 6).

Notice of Public Hearing. The Board scheduled a public hearing for September 15, 2009. Pursuant to 11 DCMR 3113.3, notice of the hearing was sent by the Office of Zoning to the Applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood Commission (ANC) 8A, and the District of Columbia Office of Planning (OP).

Posting. The Applicant posted placards at the property regarding the application and public hearing in accordance with 11 DCMR §§ 3113.14 through 3113.20. It also submitted an affidavit to this effect in accordance with 11 DCMR §§ 3113.19 and 3113.20. (Exhibit 24).

¹ The authorization actually references the Zoning Commission rather than the Board of Zoning Adjustment, but the Board is persuaded that counsel was duly authorized to appear in this proceeding.

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OP Report. The Office of Planning filed a report recommending approval of the zoning relief requested. (Exhibit 25). In addition, OP's representative, Paul Goldstein, testified at the public hearing in support of the application.

ANC 8A. The subject site is located within the jurisdiction of ANC 8A, which is automatically a party to this application. In its report dated September 10, 2009, ANC 8A indicated that at a regularly scheduled monthly meeting with a quorum present, it voted not to support the application. (Exhibit 26). The ANC cited the following issues and concerns regarding the application: (1) The site is located in the C-2-A zone, a zone which the ANC asserts is not suitable for residential development, (2) The lot occupancy should "remain" at 60% (the maximum allowed in the zone as a matter-of-right), (3) Parking will be at a "premium" on the street due to the new library on Good Hope Road and the funeral home next door, (4) The Applicant's request for "reduced parking" will adversely affect the use of neighboring property and will not be in harmony with the Zoning Regulations and the Zoning Map,² and (5) Ward 8 is already "over saturated" with "Community Base[d] Service Facilities". The ANC also asked that the Board give "great weight" to its recommendations. ANC 8A chairman Anthony Muhammad testified at the public hearing, stating that although the ANC opposed the building, it did not oppose the special exception relief from the roof structure requirements.

The Applicant's Case The Applicant offered testimony from two witnesses: Jennifer Bremmer, the Housing Development Project Manager at SOME, and Jane Nelson, who is licensed in architecture in the District of Columbia and has twenty-six years of professional experience. Following questions from the ANC Commissioner and a review of Ms. Nelson's background and experience, the Board qualified Ms. Nelson as an expert in architecture.

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

1. The property is a rectangular parcel located at the southwest corner of Good Hope Road and Fendall Street, S.E., and measures approximately 10,736 square feet in area.
2. The property borders Good Hope Road S.E. to the north, Fendall Street SE to the east, a 16-foot public alley to the south, and a two-story commercial building to the west.
3. The property is located in the C-2-A zone district in Square 5765, a square that is split zoned C-2-A and R-3. In general, the area to the south of the property is characterized by one-family dwellings and multi-family residential uses, whereas the area to the north along Good Hope Road is characterized by moderate density commercial uses.

² The Applicant did not request a reduction in parking, and contends that the parking spaces provided are in accordance with what is required. Since this application was self-certified, the Zoning Administrator will determine the validity of the Applicant's assertion when reviewing the plans for compliance with this and all other requirements of the Zoning Regulations.

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4. The property is improved with a three-story brick apartment building (with 27 units) that was constructed in approximately 1936. It was used as an apartment building from the time it was built until it fell into disrepair some time before the Applicant purchased it.
5. The existing building occupies 73% of the lot, and therefore exceeds the 60% maximum lot occupancy that is permitted in the C-2-A zone. *See*, § 403. It is roughly U-shaped with wings measuring about 40 feet in depth.

The Applicant

6. SOME is a 40-year-old interfaith community-based organization, with a mission to serve the poor and homeless of the District.
7. SOME launched an affordable housing development initiative, with a goal of building 1,000 new units of safe, affordable housing in the District. It purchased the building in December 2006, with the intent to renovate it and provide affordable housing for seniors.

The Proposed Project

8. SOME proposes an addition to an existing building to renovate and reconfigure the apartment building, converting it into an affordable residential building for approximately 49 senior citizens. The reconfigured building will contain 43 units. The renovation also includes restoration of the façade and a new elevator.
9. The existing building has limited access to outdoor space. Although there is a courtyard in the middle of the building, it is very small and provides limited opportunities for outdoor recreation. As part of the renovation, SOME will add a roof-top terrace that will provide outdoor recreation space to the residents.
10. Because of the existing stairway and the necessity of an elevator, the Applicant must provide multiple roof structures. Creating an efficient, well-designed, and accessible building would be unduly restrictive for this old structure if only one roof structure were permitted. Therefore, two new roof structures will be created: an elevator and a set of stairs. The elevator will go to the roof to make the roof-top terrace fully accessible, and an existing set of stairs (which does not currently go to the roof)³ will be extended and provide an additional means of access to and egress from the roof-top.
11. The additional stairway and elevator structures are necessary for safety and universal accessibility purposes. Since the building is more than 70 years old, it was constructed long before accessibility for persons with disabilities was a consideration. While the stairway locations are fixed, the proposed renovation would place the elevator bank adjacent to the building's lobby.

³ There will be a third rooftop structure, an existing staircase which already goes to the roof.

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12. The new elevator enclosure will be 15 feet in height and the new stairway enclosure will be 8 feet 10 inches in height. The proposed elevator enclosure will be set back 14 feet three inches from the external northern wall and 10 feet from the courtyard wall. The proposed stairway enclosure will be set back 5 feet eleven inches from the courtyard wall. The configuration of the existing building makes it impossible for the elevator roof structure to be set back from all exterior walls at a distance equal to its height.
13. The Applicant also proposes to construct a trellis adjacent to the proposed elevator enclosure.

The Zoning Relief

14. The applicant proposes an addition to a structure that is non-conforming as to lot occupancy. Accordingly, the Applicant seeks an area variance from the nonconforming structure provisions of § 2001.3 of the Zoning Regulations. Although the project will not result in an increase in lot occupancy, it will cause the floor area ratio (FAR)⁴ to increase slightly.
15. The Applicant also seeks special exception relief from the roof structure requirements under §§ 770.6 and 411 of the Zoning Regulations. Since it proposes to construct two roof structures (in addition to the one existing roof structure), the Applicant requires relief from § 411.3, which requires that all roof mechanical equipment be placed in one rooftop enclosure. Since the two additional roof enclosures will vary in height (one at 15 feet, and one at 8 feet 10 inches in height) the Applicant requires relief from § 411.5, which requires that roof enclosure walls be of equal height. Since the new rooftop structures will not meet the 1:1 setback ratio required by §§ 411.2 and 760.6(b), it also requires relief under these provisions.
16. The Applicant maintains that the proposed project will comply with the parking schedule within the Zoning Regulations. According to the project manager, parking is not a concern in the area and the facility will not create significant parking demand. Although OP agrees with these assertions, the Zoning Administrator (ZA) will review the project's compliance with parking requirements when the Applicant applies for a building permit. In any event, the Applicant does not seek relief from the parking requirements. Because this application is self-certified, the issue of parking compliance is not before this Board.

Impact of the Proposed Project

17. The Board finds that the proposed project will have very negligible impact. The addition consists of only two additional roof structures and will not increase the footprint of the building. The Board accepts the architect's testimony that the roof structures will not cast shadows on or block airflow to nearby properties because they are spaced apart and are not disproportionately large. (T. p. 331).

⁴ See, § 771.2.

BZA APPLICATION NO. 17967**PAGE NO. 5****CONCLUSIONS OF LAW****The Nonconforming Structure Variance**

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat., 799; D.C. Official Code § 6-641.07(g)(3) (2008 Repl.) (“Zoning Act”), to grant variances from the strict application of the Zoning Regulations. As stated above, the applicant here seeks relief from the nonconforming structure provisions of § 2001.3.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property has an exceptional size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the property owner will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove “practical difficulties,” an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* at 117

Exceptional Condition

The exceptional condition affecting this property is the existing abandoned building, which is in desperate need of modernization, and which already exceeds lot occupancy. In order for the building to be useful in any manner, extensive renovations and rehabilitation will be required, but the nature of the building limits the placement of the elevator shaft and stairway. Because the building was built to a lot occupancy of 73%, almost no improvements to this building would be permitted under § 2001.3 of the Zoning Regulations. The project will not increase the lot occupancy. But for the fact that the FAR will be slightly increased, this application would be unnecessary. In addition, the Applicant is a nonprofit interfaith community-based organization dedicated to helping the poor and homeless in the District of Columbia. Accordingly, under *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091 (D.C. 1979), the Board may apply a more flexible standard when evaluating the exceptional condition of the property.

Practical Difficulty

According to the Court of Appeals, increased expense and inconvenience are among the proper factors for the Board’s consideration when evaluating practical difficulty. *Gilmartin*, 579 A.2d at 1171. Here, it would be unnecessarily burdensome for SOME to renovate the building without making any additions to it. SOME’s programmatic needs for this particular building necessitate an addition. As stated, the target population for this project will be senior citizens. Because of this, an elevator will be necessary for the residents to reach the upper floors and the roof terrace. Thus, the addition of an elevator penthouse will be essential for this building to accommodate the senior citizen residents. Further an additional roof structure for the stairway to the roof is

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necessary for life safety. Without these two additional roof structures, the building would not be fully accessible, and SOME would not be able to serve the population it is aiming to help with this project. Making the building fully accessible without an addition would be impossible or would be so incredibly cost-prohibitive and burdensome that the Applicant would be unable to renovate the building.

Relief can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the zone plan

Again, the Board agrees with the Applicant and OP. This project will have minimal impact and will not affect the public good in any detrimental fashion. The Applicant only proposes to construct two additional roof structures. The project will not increase the footprint or extend or increase lot occupancy. As noted in the application, this building has stood in this location since 1936 without adversely impacting the intent, purpose, and integrity of the zone plan in any respect.

The Roof Structure Special Exception

The Board is authorized under Section 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) to grant special exceptions as provided in the Zoning Regulations. 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 criteria of § 411.11.

This Applicant seeks a special exception to have multiple roof structures of varying heights, with three enclosures, which do not meet the setback requirements of §§ 411 and 770.6. This application meets the standards in § 3104. The Board agrees with OP that the special exception use will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect the use of neighboring properties.

In addition to meeting the general standards for special exception approval under § 3104, the Applicant has demonstrated that it meets the criteria under § 411.11 for relief from the roof structure requirements; specifically, [w]here [compliance is] *impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area*” [and would be] *unduly restrictive, prohibitively costly or unreasonable.*”

The Board agrees with OP that relief is needed from the single-enclosure and uniform height requirements for roof structures. In order to satisfy § 411.3, the Applicant would either need to reconfigure the locations of the stairways and elevator, envelop the three rooftop structures in one large enclosure, or abandon rooftop access altogether. Based on the building design, it would be

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prohibitively expensive or impractical to comply with this provision. (Exhibit 25). As stated, § 411.5 requires that “enclosing walls from [the] roof level shall be of equal height, and shall rise vertically to a roof...” The three enclosures proposed are of varying heights: 15 feet, 8 feet 10 inches, and 8 feet 9 inches. In order for the three enclosures to be a uniform height, the shorter stairway structures would each need to be raised several feet. Not only would this result in unreasonable costs, there would be no real purpose. The result would likely produce more obtrusive structures of no benefit to SOME or to the public. (OP Report, Exhibit 25, *See also*, testimony of Ms. Nelson, T. p. 327 - 328).

Regarding relief from § 411.2, the Board concurs with the Applicant’s position. Moving the locations of the roof structures such that they have a 1:1 setback ratio would be unreasonable and unduly restrictive given the building’s configuration. The location of the proposed stair enclosure over the existing stair is predetermined, and no feasible structure for the stairs could be set back from the court wall at a 1:1 ratio in this location. The location of the elevator structure is linked to the need for an elevator location which is convenient to the lobby. Otherwise the residents with limited mobility would have to maneuver down the corridor to an elevator and make their way down the corridor again on an upper floor. Furthermore, there is not enough depth on the roof to have a 1:1 setback from every exterior wall.

ANC Issues and Concerns

Section 13(b) (d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10 (d)(3)(B)) requires that the Board’s written orders give “great weight” to the issues and concerns raised in the recommendations of the affected ANC. Specifically:

The written rationale of the decision shall articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances. In so doing, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission. Further, the government entity is required to support its position on the record.

Id.

As noted, the ANC opposed the application and raised several concerns. However, most of the issues and concerns raised in the ANC report are not legally relevant to this proceeding. The issues and concerns mostly concern the use of the property (i.e., the location in the C-2-A zone, and the over-saturation of community based service facilities in Ward 8). These objections are not related to the zoning relief sought (area variance for an addition and roof structure special exception) but to the use of the building. Therefore, the objection as to use is not a relevant “issue” or “concern” to be given great weight. *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, 395 A.2d 85, 91 (D.C. 1978).

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The ANC also asserts that the lot occupancy should “remain” at 60%. However, this is impossible. The existing building is already at 73% lot occupancy and there is no requirement that it be demolished in whole or in part.

Regarding the parking concerns, the Applicant has not sought to reduce its parking requirement, as suggested by the ANC. The Board understands that the ANC believes that such a request should have been made as part of this self-certified application, but the Applicant apparently believes otherwise. The Board need not resolve the issue in order to dispose of this application. No building permit for this project will issue unless the ZA determines that the project complies with all of the applicable requirements of the Zoning Regulations for which relief has not been sought, including the minimum parking space requirements of Chapter 21. Should the ZA find compliance, and the ANC disagrees, it may appeal that determination to this Board. At this point, the issue is neither relevant nor ripe for determination.

It appears from the ANC’s testimony that its primary concern was that the building is too small to accommodate 43 units. The ANC suggested that the renovation include only 30 units. (*See*, T. p. 339). However, this issue too is beyond the purview of the Board. Unit size is only relevant in the R-4 zone and only when new units are being added. In general, the minimum size of habitable rooms is determined by § 402 of the District’s Housing Regulations (Title 14 DCMR).

It should be noted, finally, that the ANC had no objections to the special exception relief for the proposed roof structures. (T. p. 342). It objected only to the proposed addition to the building. As discussed above, with the possible exception of parking concerns, these objections were not related to the zoning relief that was actually sought. In sum, the Board has not given great weight to most of the ANC’s written recommendations but, nevertheless, has addressed some of its issues and concerns in this decision.

The Board is also required under D.C. Official Code § 6-623.04 to give “great weight” to OP recommendations. For the reasons stated in this Decision and Order, the Board agrees with the advice received from OP.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application is hereby **GRANTED**, pursuant to Exhibit No. 10, Plans, to allow zoning relief from the requirements under § 2001.3 and § 411.

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

BY ORDER OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

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

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FINAL DATE OF ORDER: March 18, 2010

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.

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

Application No. 17975 of Cleotilde E. Galvez Kimmell, pursuant to 11 DCMR § 3104.1, for a special exception for a child development center (12 children and 4 teachers) under section 205, and for a special exception to allow a required parking space to be located off-site under § 2116.6 in the R-1-B District at premises 6524 8th Street, N.W. (Square 2973, Lot 81).¹

HEARING DATES: October 20, 2009, January 19 and March 9, 2010
DECISION DATE: March 9, 2010

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The Application was accompanied by a letter, dated December 22, 2008, from the Zoning Administrator stating that the Applicant's Home Occupation Permit application to operate as a child development center for 12 children and 4 teachers was denied due to the need for Board of Zoning Adjustment approval. (Exhibit 4).

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) 4B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4B, which is automatically a party to this application. ANC 4B recommended approval of the application. The ANC submitted two filings, one filed on March 8, 2010 that includes the ANC's unsigned draft minutes from its December 7, 2009 Special Public Meeting, at which the ANC heard a presentation from the Applicant and her attorneys and voted to support the application at a meeting at which a quorum was present. (Exhibit 44). The other filing, dated January 12, 2010, is a letter from the Single Member District (SMD) Commissioner in whose SMD the Applicant operates and resides, also indicating that the ANC heard from the Applicant and her attorneys on December 7, 2009 and that the ANC voted unanimously to support the application. (Exhibit 37).²

¹ On two occasions the Applicant amended the application to include parking relief. Initially, the application was amended to seek area variance relief under § 3103.1 from the off-street parking requirements under § 2101.1. At the March 9, 2010 public hearing, the Applicant amended the application a second time. Special exception relief was sought and ultimately granted from § 2116.6 to allow the Applicant to locate the one required parking space on a different lot than the subject property.

² Although the Board acknowledged the ANC's support of the application, the Board was unable to give either ANC report great weight as neither met the technical requirements of the Zoning Regulations.

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The Office of Planning (OP) submitted a timely report recommending approval of the application with a condition of a five year term. (Exhibit 38). DDOT recommended approval of the application. (Exhibit 36). The Office of the State Superintendent of Education (OSSE), Child Care Licensing Unit, recommended that the application be granted. (Exhibit 20). Letters in support of the application were submitted by Ayize Sabater, Interim Pastor, PLBC, Promised Land Baptist Church and two of the Applicant's neighbors, Francis R. Yates, and Juan P. Velasquez. (Exhibit 46). Moreover, the church as well as the two neighbors indicated their willingness to offer the Applicant access to and the use of their off-street parking spaces on their property. Letters in opposition of the application were submitted by Dianne and Ernest C. Carson (Exhibit 19), Laura B. Jackson (Exhibit 21), and Glennnda Harrison (Exhibit 26).

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 §§ 205 and 2116.6. 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, 205, and 2116.6 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 application be **GRANTED AS CONDITIONED:**

- 1) The application is approved for FIVE (5) YEARS from the effective date of this order.
- 2) One off-site parking space shall be provided at 6520 8th Street, N.W. and, should that off-site location not be available, alternatively at 6512 8th Street, N.W.

VOTE: **4-0-1** (Marc D. Loud, Peter G. May, Meridith H. Moldenhauer, Nicole C. Sorg to APPROVE. Shane L. Dettman not present, or voting.)

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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: March 16, 2010

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

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

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

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

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

Application No. 17977 of Frederic and Laure-Anne Badey, pursuant to 11 DCMR § 3103.2, for a variance from the height requirements of subsections 2500.4 and 2500.6, a variance from the use provisions of subsection 2500.5, and a variance from the side yard requirements of subsection 2500.6, to allow a second story addition to an existing accessory building proposed for living quarters, in the R-4 District at premises 541 14th Street, S.E. (Square 1043, Lot 860).

HEARING DATE: October 27, 2009

DECISION DATE: October 27, 2009

DECISION AND ORDER

This application was filed on June 3, 2009 by Frederic and Laure-Anne Badey (collectively, “Applicant”), the owners of the property at 541 14th Street, S.E., the subject of this application (“subject property”). The self-certified application requests two area variances and a use variance in order to add a second story to an existing detached garage and to use that second story as a dwelling unit.

The Board of Zoning Adjustment (“BZA” or “Board”) held a public hearing on the application on October 27, 2009, and at the close of the hearing, deliberated on the application and denied it by a vote of 3-0-2.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated June 5, 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”), and the Councilmember for Ward 6. By memoranda dated July 31, 2009, OZ sent notice of the filing of the application to Advisory Neighborhood Commission (“ANC”) 6B, the ANC within which the subject property is located, and to Single Member District 6B06.¹ Pursuant to 11 DCMR § 3113.13, OZ published notice of

the hearing in the *D.C. Register*, and provided such notice to the Applicant, ANC 6B, and all owners of property within 200 feet of the subject property.

Request for Party Status. ANC 6B was automatically a party to this application. There were no requests for party status.

¹On June 6, 2009, OZ had erroneously sent notice of the application to ANC 6A and Single Member District 6A06. This error was corrected with the subsequent July 31st mailings to the correct entities -- ANC 6B and Single Member District 6B06.

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Applicant's Case. The Applicant's architect presented the case for the variances. He explained that, due to the narrowness of the property, the Applicant could not add a bedroom at the rear of the dwelling without losing a bedroom at the same time, making it a futile endeavor, and necessitating the addition on top of the garage. The Applicant anticipates using the addition to provide a living space for his overseas relatives, who often come and visit for long periods.

Government Reports. The Office of Planning filed a report with the Board recommending denial of both the area and use variance requests. OP opined that the property exhibited exceptional conditions, but that these conditions did not give rise to either practical difficulties in complying with the Zoning Regulations, necessary for the area variance, or undue hardship on the property owner, necessary for the use variance. OP also stated that granting the variances would substantially impair the intent and/or integrity of the Zoning Regulations and Map. Exhibit No. 26.

ANC Report. ANC 6B submitted a letter to the Board taking no position on the application. Exhibit No. 24.

Persons in Support or Opposition. The Board received one letter in support of the application. Exhibit No. 23.

FINDINGS OF FACTThe subject property and the surrounding area

1. The subject property is located at address 541 14th Street, S.E., in Square 1043, Lot 860, and in an R-4 zone district.
2. The Square is split-zoned, R-4, C-M-1, and C-2-A, and contains a mix of residential, commercial, and government uses.
3. The property fronts 14th Street to the east and abuts an improved 25-foot wide rear alley to the west.
4. The property is improved with a pre-1958 two-story row dwelling, encompassing approximately 1,160 square feet.
5. Along the north side of the dwelling, beginning at approximately its center, and extending to its rear, is a dog-leg, slightly-less-than-3-foot-wide open court.
6. At the rear of the property is a one-story detached garage, which is approximately 14 feet high and occupies approximately 624 square feet.
7. To the north and south of the property are two-story row dwellings. Some of these dwellings have detached garages behind them, all of which are one story high.

BZA APPLICATION NO. 17977**PAGE NO. 3**The Applicant's Proposal

8. The Applicant proposes to add a second story to the detached garage, resulting in a 22-foot height, and necessitating relief from the height requirements for accessory buildings found in 11 DCMR §§ 2500.4 and 2500.6.
9. The addition of the second story also necessitates relief from the requirement that a 2-story accessory structure have a side yard whose width is "equal to the minimum width of a required side yard in the district in which it is located." 11 DCMR § 2500.6.² (Emphasis added.)
10. The second story will be outfitted as, and used as, a dwelling unit, necessitating use variance relief from 11 DCMR § 2500.5, which permits such use only in R-1-A and R-1-B zone districts.
11. The first floor of the garage will continue to be used for vehicle parking.
12. An external staircase will be constructed to provide access to the second floor dwelling unit.

Variance relief*Exceptional condition*

13. The subject property is long, narrow, and irregularly shaped. It is approximately 130 feet long and 13 feet wide for the first 100 feet starting from 14th Street. The rear 30 feet of the property widen out to approximately 27 feet, and this is where the garage is located.
14. Four lots to the south of the property are also 13 feet wide, but this is not common elsewhere in the Square, and is unusually narrow compared to District-wide norms.

No practical difficulty

15. The lot occupancy of the dwelling and garage on the property is 58%, where 60% is permitted as a matter-of-right, or 70% with a special exception. See, 11 DCMR §§ 403.2 & 223.
16. A third story could be added on the dwelling, as three stories are permitted in the R-4 zone. 11 DCMR § 400.1.

²It is not entirely clear that this relief is necessary. The "*district in which the 2-story accessory building is located*"-- R-4 -- does not require side yards in this situation, making it appear that § 2500.6 would not require a side yard here. But, without a variance, 2-story accessory buildings are not permitted in an R-4 district at all. They are only permitted in R-1-A and R-1-B districts, both of which require 8-foot side yards. Therefore, the apparent intent of § 2500.6 is to retain an 8-foot side yard next to a 2-story accessory building. The Board therefore concludes that the better interpretation of § 2500.6 is that which requires a side yard for a 2-story accessory building, even in this R-4 zone.

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17. The open court could be filled in to add interior living space to the dwelling.

18. A new bedroom could be added at the rear of the existing dwelling.

No undue hardship

19. The subject property has been successfully used for residential purposes for many years, and is so used by the Applicant.

Substantial impairment to intent and integrity of Zoning Regulations

20. The proposed second story addition to the garage would be an anomaly in the neighborhood and would create a disjointed “look” along the alley.

21. The height and story limitations on accessory buildings in the Zoning Regulations prescribe their appearance and development density in order to maintain the character of the zone district.

22. Two-story accessory buildings on alleys, with dwelling units, are narrowly circumscribed by the Zoning Regulations and are permitted only in R-1-A and R-1-B districts because of the greater requirements for minimum lot area and minimum yard widths imposed in these zones.

CONCLUSIONS OF LAW

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. Bd. 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), 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. Bd. of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case is requesting area variances and a use variance. Therefore, it had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in both “practical

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difficulties” in complying with appropriate area requirements and an “undue hardship” to the Applicant in complying with appropriate use requirements. Lastly, the Applicant had to show that the granting of the variances would not impair the public good or the intent or integrity of the Zone Plan and Regulations.

Exceptional Conditions

The subject property exhibits exceptional conditions and meets the first prong of both the area and use variance tests. It is exceptionally narrow, at 13 feet wide for 100 feet of its 130-foot length, making for a very narrow dwelling. It is also oddly-shaped in that it bumps out to a width of 27 feet for the rear 30 feet of its length.

Practical Difficulties

Although the property exhibits exceptional conditions, they do not give rise to practical difficulties to the Applicant in complying with the Zoning Regulations. The lot size may be unusual, but notwithstanding the narrowness of the lot, a new bedroom could be added at the rear of the existing dwelling. The Applicant’s architect explained that the Applicant chose not to add a bedroom at the rear because the existing rear bedroom would then have to be converted to a hallway or entry space to the new bedroom, resulting in its loss. Hearing Transcript at 71, lines 16-21 and at 72, line 1.

The Applicant may have opted for a vertical addition on the garage for the placement of a new bedroom, but there is another option available without the need for variance relief. In fact, it would be possible to leave the existing bedroom and pass through it to the new bedroom. The inconvenience caused as a result of this shared access would be minimal in view of the fact that the added bedroom will only be used on a temporary basis. *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976) (inconvenience resulting from reduction of living space if kitchen addition were constructed without a variance “did not rise to the level of ... ‘peculiar and exceptional practical difficulties.’”) Nor did the need for the side yard variance result from any exceptional condition. The variance is needed because the existing one-story garage was built without such a side yard. The Applicant has not alleged that this is at all exceptional.

Even if the exceptional circumstances had led to practical difficulties, it would not be appropriate to grant the area variances sought. Variance relief is extraordinary relief in that it permits what would otherwise not be permitted, and it cannot be granted merely for personal preference, such as the Applicant’s wish to have a bedroom to accommodate visiting relatives.

Undue Hardship

The District of Columbia Court of Appeals (“DCCA”) has interpreted “undue hardship” in the context of a use variance, to mean that a property cannot be put to any use for which it can be

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reasonably adapted. *See, Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). (“A use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations.”) *See also, Bernstein v. D.C. Bd. of Zoning Adjustment*, 376 A.2d 816, 819-820 (D.C. 1977) (“[I]t must be shown that strict application of the Zoning Regulations would preclude the use of the property for any purpose to which it may be reasonably adapted.”)

The application fails on this prong of the use variance test. The property is being used by the Applicant as his dwelling, with the accessory garage being used as a garage. There is no evidence, and no claim that, the exceptional conditions of the property render the residential use of the property impossible or unreasonably difficult. The property is therefore being successfully used for the use permitted in the R-4 zone district and the Applicant’s personal preference to create more space for visiting relatives does not rise to the level of “undue hardship” necessary to grant a use variance.

Substantial Impairment of Intent and Integrity of Zone Plan and Zoning Regulations

The Zoning Regulations strictly control the location, density, and height of accessory structures. With one specific exception, they are restricted, in all zones, to 15 feet, or one story, in height. 11 DCMR § 2500.4. The one exception is that 2-story accessory structures are permitted in R-1 zones. § 2500.5. But, even this exception is tightly restricted by height – to a maximum of 20 feet – and by use – it may only be used as living quarters for domestic employees of the owner of the main building. §§ 2500.5 and 2500.6. A further restriction is imposed on a 2-story accessory building. Whereas a one-story accessory building used as a garage and located in a rear yard would not require a side yard (11 DCMR § 2300.2(a)), a 2-story accessory building, even if located in a rear yard, must have a side yard equal in width to that required in the zone district in which it is located, which would in the normal course be either an R-1-A or an R-1-B district, necessitating an 8-foot side yard. § 2500.6.

The Zoning Regulations’ strict regulation of accessory structures permitted in a given zone district maintains the regularity of development within the zone, preventing an over-massive built environment. The height and massing of the two-story accessory structure requested by this application would undermine the character of the R-4 zone district and therefore impair the intent and integrity of the Zone Plan and Zoning Regulations. Along the row of adjacent one-story garages facing the alley, this 2-story structure “sticks out like a sore thumb.” *See*, Exhibit No. 7, sheet SK1.2. It would create a disharmonious note along the alley, and is contrary to the intent of the Zoning Regulations to strictly control the size and location of accessory structures.

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 two entities and an explanation of why the Board did or did not find their views persuasive. OP recommended denial of both the area and use variance requests, and the Board agrees. ANC 6B, although it filed a letter with the Board properly noting the procedural information necessary to

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accord it great weight, took no position on the substance of the application to which to accord such great weight.

For all the above reasons, the Board concludes that the Applicant has failed to satisfy the burden of proof necessary under § 3103.2 with respect to all the area and use variances requested herein. Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: 3-0-2 (Marc D. Loud, Shane L. Dettman, and Meridith H. Moldenhauer to Deny; two members not participating or voting)

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

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

FINAL DATE OF ORDER: March 19, 2010

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.

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

Application No. 18000 of Christopher and Jean Whaley, pursuant to 11 DCMR §§ 3104.1 and 1202.1, for a special exception to allow a two-story rear addition to a one-family semi-detached dwelling located in the Capitol Interest (CAP) Overlay/R-4 District under § 223, not meeting the lot occupancy (§ 403), side yard (§ 405), and nonconforming structure provision (§ 2001.3) at premises 321 6th Street, S.E. (Square 844, Lot 810).¹

HEARING DATE: November 24, 2009

DECISION DATE: November 24, 2009

DECISION AND ORDER

This application was filed on August 19, 2009, by Christopher and Jean Whaley (collectively “Applicant”), the owners of the property that is the subject of this application (“subject property”).

The Board held a hearing on the application on November 24, 2009, and, at the close of the hearing, deliberated on the application, and decided to grant it, by a vote of 4-0-1.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated August 20, 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”) 6B, the ANC within which the subject property is located, Single Member District 6B02, 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 September 16, 2009, provided such notice to the Applicant, ANC 6B, and all owners of property within 200 feet of the subject property. On November 10, 2009, OZ provided notice of the hearing date to the Architect of the Capitol (“AOC”), as required by 11 DCMR § 1202.

Requests for Party Status. ANC 6B was automatically a party to this application and filed a letter of support with the Board. There were three requests for opposition party status from nearby neighbors, and one neighbor declined to oppose or support the application, but she “designated” one of the neighbors requesting opposition party status to represent her “opinion on [the] matter.” Exhibit No. 26. The requests for party status opposed the application on several grounds: negative impacts on light, air, views, privacy of use and enjoyment of neighboring properties, allegedly too-great size, height, and massing, concern for alleged lack of harmony of the proposed addition with the historic neighborhood, and concern for the integrity of the

¹ The original application included an alternative request for three area variances. The Board treated the request for a special exception as the proper request and the caption therefore reflects just that form of zoning relief.

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attached mirror-image structure. The neighbor immediately to the north of the subject property and the neighbor residing in the attached dwelling were both granted party status. The other party status request was denied, but the neighbor residing in the attached dwelling spoke on behalf of the other party status requestor and the neighbor who had declined to take a position.

Applicant's Case. The Applicant gave a brief statement concerning the proposed project, but the Applicant's architect and land use and zoning expert presented the bulk of the case. Both of these experts testified as to how the application met the special exception and variance tests. The architect also presented the results of a shadow study she had performed.

Government Reports. The Office of Planning filed a report with the Board on November 17, 2009, recommending approval of the application as a special exception pursuant to 11 DCMR §§ 223 and 1202. The OP report concluded that there is a sufficient side yard and rear yard separation between the proposed addition and its closest neighbors, and that the neighbor immediately to the north has a three-story rear addition, whereas the proposed addition will be only two stories. The report also indicated that the proposed addition will not have any windows on its south side, nor will it be more than minimally visible from a street. OP therefore found that the proposed addition will not unduly affect light, air, privacy, use, or enjoyment, nor will it visually intrude upon the character of the area, and that the provisions of both §§ 223 and 1202 are met.

The report and recommendation from the Historic Preservation Review Board ("HPRB") staff, dated March 26, 2009, was appended to the OP report. The HPRB staff report explained how the design of the proposed addition had been revised to incorporate changes suggested by the staff, and that the newly-revised design was a fair improvement. The report spoke approvingly of the reduced height achieved by the removal of the originally-proposed third story, as well as the reduced massing due to the exchange, on the second story, of a bedroom for an uncovered deck. The report concluded that "[t]he revised plan is compatible with the historic house and with the character of the Capitol Hill Historic District." Exhibit No. 33, Attachment.

ANC Report. ANC 6B filed a letter on November 16, 2009, stating that, at a properly-noticed regularly-held meeting, held on November 10, 2009, with a quorum present, the ANC voted unanimously to recommend approval of the application. The letter states that the ANC "believes the project's impact on air, light, and privacy are negligible." Exhibit No. 30.

Persons in Support or Opposition. No persons (*i.e.*, not "parties") appeared in support or in opposition.

FINDINGS OF FACTThe Subject Property and the Surrounding Area

1. The subject property is located at address 321 6th Street SE, Square 844, Lot 810, in the R-4 zone district, as well as in the Capitol Interest ("CAP") Overlay District and the Capitol Hill

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Historic District.

2. The subject property is of a rectangular shape fronting on the west side of 6th Street SE, with a width of 19 feet and a length of 105.08 feet.
3. There is no alley access at the rear of the property.
4. The subject lot is nonconforming as to lot width and area for a semi-detached dwelling, with a width of 19 feet, where 30 feet is required, and an area of 1,996 square feet, where 3,000 square feet is required. 11 DCMR § 401.
5. The property is improved with a one-family semi-detached dwelling, constructed in the mid-nineteenth century, which is attached to a dwelling that presents essentially its mirror image.
6. The subject dwelling is of frame construction, 34 feet long and 11 feet wide, with two full stories and a one-story rear addition.
7. The dwelling is nonconforming as to lot occupancy, with a lot occupancy of 47.6% where 40% is permitted, and as to side yard, with a side yard of one foot, eight inches, where at least eight feet is required. 11 DCMR §§ 403 & 405.
8. The surrounding neighborhood is predominantly residential, including some multi-family buildings. The west side of 6th Street is residential, while the east side is residential at its southern half and commercial at its northern half, including across the street from the subject property.

The Applicant's Proposal

9. The Applicant proposes to remove the existing one-story rear addition and replace it with a two-story rear addition that will extend 4 feet further into the rear yard than the current one-story addition.
10. The addition will add approximately 100 square feet to the dwelling's first floor and approximately 400 square feet to the second floor, and will increase the lot occupancy of the dwelling to approximately 56.8%.
11. The party wall between the dwelling and the attached dwelling to the south is not currently fireproof, but will be fireproofed when the new addition is constructed.

Consistency with the Special Exception Criteria

12. The new addition will have a sloping roof, which, at its highest point, will be significantly lower than the roof of the existing dwelling.
13. The new addition will be barely visible from 6th Street.

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14. The first 10 feet of the rear addition, closest to the existing dwelling, will leave a side yard of two feet, two inches, between its northern wall and the northern lot line, and the rest of the new addition is stepped further away from the northern lot line, leaving a side yard of six feet, two inches.
15. The neighboring dwelling to the north has a three-story rear addition, of more solid massing than the Applicant's proposed addition, the southern wall of which abuts a side yard approximately eight feet wide.
16. The proposed addition will not have any windows on its southern wall and a six-foot high privacy fence encloses the perimeter of the subject property.
17. The rear yard of the subject property abuts the rear yards of properties fronting on 5th Street, and the new addition will be separated from the rear yards of those properties by at least 36 feet of open rear yard space on the subject property.
18. The last eight feet, six inches of the second story of the addition will be an open deck, reducing the overall massing of the addition.
19. The deck will allow views of the adjacent rear yards, but no more so than would a window, and no more so than the northern neighbor's second-floor side veranda, which overlooks the rear yard of the subject property.
20. The neighboring dwelling to the north has 18 windows on its southern wall, all of which look toward, or into, the subject property.
21. The proposed wood frame addition harmonizes with the dwelling and will be clad in wood siding on all sides, to match the exterior of the dwelling.
22. The design of the addition is traditional, and, barely visible from the street, it does not overwhelm the dwelling itself, therefore it does not visually intrude on the character of the houses along 6th Street.
23. The height, area, and bulk of the addition are well within those contemplated in the CAP Overlay District. *See*, 11 DCMR §§ 1200, 1202, & 1203.

CONCLUSIONS OF LAW

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of § 3104, the Applicant also had to meet the requirements of § 223 and § 1202.

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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)).

The detached dwelling on the subject property is a use permitted in this R-4 zone. The proposed addition itself does not need zoning relief for its height or bulk, but relief is needed because its already nonconforming lot occupancy and side yards will be enlarged by the proposed addition. The dwelling’s lot occupancy will increase from 47.6% to 56.8% and the side yard, which will be extended in length, will be at most six feet, two inches in width, where eight feet is required. 11 DCMR §§ 403 and 405.

Ordinarily, the enlargement of an area nonconformity requires the grant of a variance from § 2001.3. However, § 223 permits such enlargements to one-family dwellings, provided that certain criteria are met. In addition, § 1202 of the Capitol Interest Overlay District requires the Board to apply additional criteria when reviewing any special exception for a property mapped within the district. The Board concludes that the application meets all of the applicable requirements.

Section 223 requires that the proposed addition not “unduly affect” the light and air available to neighboring properties, nor “unduly compromise” their privacy of use and enjoyment, § 223.2 (a) & (b). These requirements are echoed in § 3104.1’s mandate that granting of the special exception not tend to affect adversely the use of neighboring property.

The proposed addition has undergone several revisions to ensure that it does not “unduly affect” light and air or “unduly compromise” privacy of use and enjoyment of both adjacent properties. The originally-proposed third floor of the addition has been removed and an originally-proposed bedroom at the rear of the second floor has been changed into an open-air deck. Both of these changes reduce the massing of the addition and any shadows it may cast. There is a separation of between two feet, two inches and six feet, two inches between the addition and the property to the north, plus an approximately 8-foot wide side yard on that neighboring property. Beyond the rear wall of the addition is an open rear yard of 36 feet, two inches -- 16 feet longer than the 20-foot rear yard required. 11 DCMR § 404.1. The rear yard abuts the rear yards of two dwellings that front on 5th Street, amounting to a total open area of significantly more than 36 feet. The south wall of the proposed addition, newly fireproofed, will continue to share the property line with the north wall of the one-story addition of the attached dwelling, and will continue just four feet past the rear wall of the attached dwelling’s addition.

No windows will be placed on the south wall of the proposed addition, mitigating any privacy concerns in this regard. The proposed rear deck will permit views into neighboring rear yards,

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but no more so than a window would, and no more so than permitted from the second-story veranda along the south wall of the adjacent neighbor to the north.

Section 223 also requires that the addition not “visually intrude upon the character, scale, and pattern of houses along the ... street.” § 223.2(c). This is certainly true here. The proposed addition is just barely visible from the street and there is no alley from which it can be seen. The wood frame dwelling is modest in scale, and the addition follows suit. It is lower in height than the dwelling and remains tucked behind it. While any rear addition, by virtue of its existence, would have some effect on the neighbors’ views from the *rear portions* of their homes, this addition causes *no* “undue” or “substantial” adverse effects on neighboring properties.

Subsections 1202.1 (b) and (c) stipulate that a special exception within the CAP Overlay District must be consistent with the mandates of Title V of the Legislative Branch Appropriation Act, 1976, approved July 25, 1975 (Pub. L. No. 94-59, 89 Stat. 288), (the “Act”), and the master plan promulgated under the Act. Title V of the Act authorized funds to enable the AOC to develop a master plan for the future development of the grounds of the U.S. Capitol. The Board received a letter from the AOC stating that the relief requested in this application would not be inconsistent with the intent of the CAP/R-4 District nor with the goals and mandates of the United States Congress as stated in the Zoning Regulations. Exhibit No. 31.

With its traditional design, modest proportions, and matching wood-framing and wood-clad exterior, the proposed addition is compatible with the present and proposed development of its neighborhood. § 1202.1 (a). The height, size, and bulk of the addition are consistent with the goals for development within the CAP Overlay District and the addition improves the subject dwelling, thereby improving the housing stock available on Capitol Hill. *See*, § 1202.1 (b) & (c).

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 two entities and an explanation of why the Board did or did not find their views persuasive. ANC 6B unanimously voted to support the application, whether it be adjudged a special exception or variances. OP recommended approval of the application as a special exception request pursuant to §§ 3104, 223, and 1202, and that is how the Board treated it. The Board agrees with the recommendations of the ANC and OP.

For all the reasons above, the Board concludes that the Applicant satisfied the burden of proof necessary for a special exception under § 3104, pursuant to §§ 223 and 1202. Accordingly, it is **ORDERED** that the application, pursuant to Exhibit No. 11, Plans, is hereby **GRANTED**.²

²All applications granted by the Board include approval of the plans submitted with the application. 11 DCMR § 3125.7. In this case, it appears that, at the time of the hearing, deliberation, and vote to grant the application, plans showing a roof slope somewhat reduced from that shown in the plans in this record were before the Historic Preservation Review Board staff for approval. It is/was a possibility that “final permit drawings” would show this reduced roof slope. *See*, Hearing Transcript of November 24, 2009, at 156-160. Therefore, the Board hereby grants

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VOTE: 4-0-1 (Marc D. Loud, Shane L. Dettman, Meridith H. Moldenhauer, and Anthony J. Hood to grant; a fifth Board Member not participating or voting)

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

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

FINAL DATE OF ORDER: March 19, 2010

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.

the Applicant flexibility to amend the final plans to comport with the reduced roof slope recommended by the HPRB staff, if necessary, as long as this does not cause the need for further zoning relief.

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

Application No. 18017 of Carl and Undine Nash, pursuant to 11 DCMR § 3103.2, for variances to authorize the conversion, alteration, restoration, repair and use of a warehouse building for human habitation as a flat (two-family dwelling) on an alley lot under subsections 2507.1 and 2507.3, in the R-4 District at premises Rear 1216 D Street, S.E. (Square 1017, Lots 85 and 817).

HEARING DATE: February 16, 2010

DECISION DATE: March 16, 2010

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) 6B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B submitted a letter in support of the application. The Office of Planning (OP) submitted a report and testified in opposition to the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No parties appeared at the public hearing in opposition to the 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 filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 2507.1 and 2507.3, 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.

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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 Nos. 3 and 8 (Surveyor's Plat and Floor Plan respectively) is hereby **GRANTED**.

VOTE: **4-0-1** (Meridith H. Moldenhauer, Shane L. Dettman, Nicole C. Sorg and Marc D. Loud to Approve. The Zoning Commission member not participating in the case, not voting)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: March 18, 2010

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,

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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 No. 18033 of Leon Morse and Amanda Lonsdale, pursuant to 11 DCMR § 3104.1, for a special exception under section 223, for a two story rear addition to an existing one-family detached dwelling, not meeting the side yard requirements (section 405), in the R-1-B District at premises 2723 36th Place, N.W. (Square 1933, Lot 8).

HEARING DATE: February 23, 2010

DECISION DATE: March 9, 2010

SUMMARY ORDER

SELF CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (ANC) 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 resolution in support of the application, having approved the resolution by a vote of 7-0 with two abstentions at a regularly-scheduled, duly-noticed meeting at which a quorum was present. (Exhibit 21). OP submitted a timely report recommending approval of the application. (Exhibit 22). A letter of support was submitted for the record from the two neighbors closest to (and directly across the alley from) the portion of the project requiring the special exception. (Exhibit 24, 2nd attachment).

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, not meeting the side yard requirement of section 405. 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.¹

¹ The Board requested that the Applicant address storm water drainage issues, which the Applicant addressed to the Board's satisfaction. (Exhibit 24).

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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 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 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.² It is therefore **ORDERED** that this application (pursuant to Exhibit 7 – Plans) be **GRANTED**.

VOTE: **4-0-1** (Marc D. Loud, Nicole C. Sorg, Meridith H. Moldenhauer, Michael G. Turnbull to APPROVE. One Board member not participating, 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: March 16, 2010

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

² Pursuant to 11 DCMR § 3100.5, the Board also waived the posting requirements under 11 DCMR §§ 3113.14, 3113.15, 3113.18, 3113.19, and 3113.20, having found good cause for any late filings and the waiver. The Board noted that actual notice had taken place, as the ANC was notified and in support of the application and notice was otherwise provided by the Office of Zoning to the ANC, all property owners within 200 feet of the property, and by publication in the *D.C. Register*.

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ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

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

Application No. 18037 of Dix Street Corridor Revitalization Partners LLC, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception under subsection 353.1, and for the construction of more than one structure on one record lot under subsection 2516.1, and for variance relief from the number of parking spaces required under subsection 2101.1, from the size of parking spaces required under subsection 2115.1, from the number of contiguous compact parking spaces required under subsection 2115.4, from the parking area requirements under subsection 2115.10, and from the building lot control requirements under subsection 2516.4, to allow the renovation and construction of residential buildings for a new multi-family housing development in the R-5-A and C-2-A Districts at premises 400-414 Eastern Avenue, N.E., 405 – 407 Dix Street, N.E. and 61st Street, N.E. (Square 5260, Lots 2, 17, 18, 19, 28, 800, and 806).

HEARING DATE: March 2, 2010
DECISION DATE: March 9, 2010

SUMMARY ORDER

SELF CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (ANC) 7C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7C, which is automatically a party to this application. At the hearing the Applicant provided the Board with a partial copy of the ANC report, dated February 18, 2010. The ANC report indicated that the ANC voted unanimously in support of the application on February 18, 2010, at a duly-noticed, regularly-scheduled meeting at which a quorum was present.¹ (Exhibit 36). The Office of Planning (OP) submitted a timely report² recommending approval of the

¹ The Board noted that the ANC report that was filed in this case did not have the 5th and final page of the submission which would have had the required signatures. Consequently, while acknowledging that the ANC was in support of the application, the Board was unable to give the ANC's report great weight.

² The Board noted in its deliberations that while OP's report is dated "February 23, 2009," it was filed on February 23, 2010.

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application, subject to the Applicant providing additional information.³ (Exhibit 28). The District Department of Transportation (DDOT) submitted a report indicating DDOT's conditional support of the project.⁴ (Exhibit 31). There were letters of support from the Ward 7 Councilmember (Exhibit 29), the Washington Interfaith Network (Exhibit 37), and three residents (Exhibit 30).⁵ Testimony in support of the application was heard from one of those residents, Ms. Dorrie Chatman. Testimony in opposition to the application due to the potential dislocation of tenants at the property was heard from Ms. James and Ms. Kimberly.⁶

Before the record closed, the Board requested that the Applicant submit supplemental information regarding the current leases for a portion of the property. The Applicant filed a supplemental filing to respond to the issues raised by the extant leases, which the Board accepted into the record because it was requested before the record closed.⁷ (Exhibit 41).

³ OP recommended approval subject to the Applicant providing additional information about landscaping and screening options for the proposed trash enclosures and additional information about the durability of the proposed vinyl siding. As to the request for additional information about the durability of the vinyl siding, the Board noted that the Applicant's submission of a lifetime limited warranty for the material it planned to use satisfied OP's concern. (Exhibit 32). The Applicant also provided some additional information about the trash enclosures. (Exhibit 34). Ultimately, the Board provided some flexibility to the Applicant as to the location and screening of trash enclosures in a condition in this order.

⁴ DDOT requested the Applicant provide a transportation management plan (TMP) with certain provisions, including: 1) a one-time, complementary WMATA SmarTrip card with metro fare of \$35 for new residents upon move-in, 2) a one-time membership fee subsidy in a car sharing service (i.e. Zipcar) for each residential unit, and 3) bicycle parking which equals 10% of vehicle parking and adequate bicycle storage facilities for all residents. DDOT indicated that it conditionally supported the application subject to the following conditions: 1) 40 or less parking spaces to accompany the 60 residential units, 2) a DDOT-approved site-specific TMP that will assist new residents with transportation choices, and 3) a safe means for trash removal to access the site. (Exhibit 31). In its deliberations the Board noted that the Applicant has indicated that it was ready to work with DDOT with regard to DDOT's issues.

⁵ The Deputy Mayor for Planning and Economic Development submitted a letter of consent to include District-owned properties in the Application. (Exhibit 6).

⁶ The testimony raised two issues about the ongoing tenancies at the property; that is, the leases allegedly gave the tenants an option to purchase (a right of first refusal) which was not properly extended to them and their ongoing businesses at the property would be dislocated. During its deliberations, the Board found that the issue of whether a right of first refusal existed and was or was not properly extended was not within its purview and did not relate to the relief requested by the Board. The Applicant addressed the issue of the potential dislocation of the tenants in its supplemental filing, which the Board requested. (Exhibit 41).

⁷ In a supplemental filing, the Applicant responded to the issue of what would happen to the holders of two leases for a part of the subject property. The supplemental filing indicated that one part of the subject property is currently owned by the District of Columbia and another portion is owned by Francis and Sarah Fabrizio. The Applicant noted that it had contracted to purchase all of the subject property and proceeded with this application with the consent of both the District and the Fabrizios. The Applicant acknowledged that there are current tenancies pending on the subject property and further indicated that if it cannot reach an agreement to relocate the Tenants, then the Applicant would have to modify the BZA approval to remove the portion of the property encumbered by the lease(s) from the project. The Applicant further indicated that it has endeavored to assist the tenants in relocation nearby and will continue to do so. (Exhibit 41).

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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 number of parking spaces required under subsection 2101.1, from the size of parking spaces required under § 2115.1, from the number of contiguous compact parking spaces required under § 2115.4, from the parking area requirements under § 2115.10, and from the building lot control requirements under § 2516.4. Based upon the record before the Board and having given great weight to the OP report⁸ filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 2101.1, 2115.1, 2115.4, 2115.10, and 2516.4, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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 a special exception under subsection 353.1, and for the construction of more than one structure on one record lot under subsection 2516.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 353.1, and 2516.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED** (pursuant to Exhibits 12 and 13 – Architectural and Civil Engineering Plans) **SUBJECT TO THE FOLLOWING CONDITIONS:**

⁸ The Board acknowledged the ANC's support, but could not give great weight to the report, as it was missing its signature page.

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1. The Applicant shall have flexibility to make minor modifications to the site plan for the installation of or other work related to utilities, provided the modification does not change the zoning relief that was approved.
2. The Applicant shall provide sufficient screening and landscaping for the trash enclosures and shall have flexibility to make modifications to the location of such trash receptacles resulting from consultation with the D.C. Office of Planning and the District Department of Transportation.

VOTE: **4-0-1** (Meridith H. Moldenhauer, Nicole C. Sorg, Marc D. Loud, and Konrad W. Schlater to APPROVE; one Board member not participating, 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: March 16, 2010

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 § 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.

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.

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IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, STATUS AS A VICTIM OF AN INTRAFAMILY OFFENSE, 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. 18045 of Eric and Karen Dickman, pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear fourth story window dormer addition to an existing row dwelling under section 223, not meeting the nonconforming structure provisions under subsection 2001.3, in the R-3 District at premises 2623 O Street, N.W. (Square 1262, Lot 828).¹

HEARING DATE: March 16, 2010

DECISION DATE: March 16, 2010 (Bench Decision)

SUMMARY ORDER

SELF CERTIFIED

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

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. The Applicant testified that ANC 2E had voted to approve the application at its March 1, 2010 meeting. Nevertheless, the ANC did not submit a report for the record prior to the hearing and deliberation in the case. Consequently, there was no ANC report to which to give great weight. OP submitted a timely report recommending approval of the application. (Exhibit 24). Testimony and a letter of opposition were submitted for the record from a neighbor, Mr. Atish R. Ghosh. At the hearing Mr. Ghosh, after testifying to his concerns about the scope of the project, indicated that he did not wish to stop the project from going forward even if the Applicant was unable to make further changes to the project in light of Mr. Ghosh's concerns. Mr. Ghosh noted that the Applicant and his architect had consulted collaboratively with the neighbors, including Mr. Ghosh, and thanked them for their willingness to hear the neighbors' concerns. (Exhibit 23).²

¹ The Applicant amended the application by removing a request for zoning relief for the front dormer, as this relief was deemed unnecessary by the Zoning Administrator and the Office of Planning. (Exhibit 22).

² The subject property is located in the Georgetown Historic District and is immediately across from Federal land. Consequently, the application was reviewed by The Old Georgetown Board. The proposed addition was approved on February 4, 2010, subject to changes to some architectural details, and approval

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As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 223, not meeting the nonconforming structure provisions under subsection 2001.3. 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 OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 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 9 – Plans) be **GRANTED**.

VOTE: **5-0-0** (Marc D. Loud, Michael G. Turnbull, Shane L. Dettman, Nicole C. Sorg, Meridith H. Moldenhauer, to APPROVE.)

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: March 19, 2010

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.

of the final building plans was delegated to the State Historic Preservation Officer (SHPO). (See, Exhibit 24).

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

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

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

Application No. 18046 of Catherine Plume, pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear addition to an existing one-family row dwelling under section 223, not meeting the lot occupancy requirements under section 403, in the R-4 District at premises 307 9th Street, S.E. (Square 924, Lot 29).

HEARING DATE: March 16, 2010
DECISION DATE: March 16, 2010 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The Application was accompanied by a letter, dated November 2, 2009, from the Zoning Administrator stating that a review of the Applicant's plans for the subject property indicated a need for Board of Zoning Adjustment approval. (Exhibit 4).

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) 6B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a letter, dated February 24, 2010, indicating that the ANC had voted unanimously (9:0) to support the application at a regularly-scheduled, duly-noticed meeting on February 23, 2010, at which a quorum was present. (Exhibit 26). The Office of Planning (OP) submitted a timely report recommending approval of the application.¹ (Exhibit 28). Letters of support were submitted to the record from nearby neighbors, including John McGaw (Exhibit 20), William Murphy (Exhibit 21), Bob Bresnahan (Exhibit 22), Wendy Blair (Exhibit 23), Ida Prosky (Exhibit 24), and Ciara Knudsen (Exhibit 25). A letter of support from the Capitol Hill Restoration Society also was submitted for the record. (Exhibit 29).

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, not meeting the lot occupancy requirements under section 403. No parties appeared at the public

¹ The subject property is located in the Capitol Hill Historic District. According to the OP report, the proposed design has received preliminary approval from the Historic Preservation Review Board. (*See*, Exhibit 28).

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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 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 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 7 – Plans) be **GRANTED**.

VOTE: **5-0-0** (Marc D. Loud, Shane L. Dettman, Nicole C. Sorg, Meridith H. Moldenhauer, Michael G. Turnbull to APPROVE.)

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: March 19, 2010

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.

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

ZONING COMMISSION OF THE DISTRICT OF COLUMBIA**ZONING COMMISSION ORDER NO. 06-45A****Z.C. CASE NO. 06-45A****(Minor Modification and Time Extension of Approved Planned Unit Development for Consolidated PUD and Related Map Amendment – Highlands Addition)****November 23, 2009**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the “Commission”) was held on November 23, 2009. At the meeting, the Commission approved an application from the District of Columbia Housing Authority and the associated private developer team, CEMI-NMI Highlands, LLC, (the “Applicant”) for a three-year extension and minor modifications to an approved planned unit development (“PUD”) for property identified as Lots 78 and 80 in Square 6123, Lots 20-25 and 972 in Square 6125, and Lots 65-69 and 72 in Square 6126 located in the Washington Highlands neighborhood of Southeast Washington, pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations (“the Application”). The Commission determined that the Application was properly before it under the provisions of §§ 2409.9, 2408.10, and 3030 of the Zoning Regulations.

FINDINGS OF FACT

1. By Zoning Commission Order No. 06-45 dated July 30, 2007 (“PUD Order”), the Commission approved a PUD and related map amendment for multiple properties in Square 6123, 6125, and 6126. The Order approved the construction of a large community redevelopment project that comprises a total of 138 new residences, including 18 triple-stacked flats, 95 single-family townhouses, and 24 semi-detached units and one single-family detached unit. The Order required 30% of the dwelling units to be rental units affordable to households having 60% or less of Area Median Income (“AMI”), and the remaining units (108) to be for sale. The approval became effective upon the publication of Zoning Commission Order No. 06-45 in the December 28, 2007 edition of the *D.C. Register*. Pursuant to § 2408.8, the PUD would be valid until December 28, 2009, within which time an application must be filed for a building permit.
2. The requested time extension stems from the very difficult site conditions which increased original cost estimates and necessitated that the Department of Housing and Community Development (“DHCD”) pursue a federal subsidy. Because of unforeseen issues related to the site’s topography, the initial cost estimates for the infrastructure improvements have proven insufficient, creating a budget gap for the project. DHCD is providing some subsidy to the development but is unable to close the budget gap, in part because of the economic downturn and the resulting decrease in District resources. In order to fill this funding gap, the Applicant has decided to pursue federal funding through the HOPE VI financing program. The additional time is needed for the District to apply for federal HOPE VI funding.
3. The Application also requested a minor modification to the original PUD Order to allow a change in the tenure mix. The original PUD Order required the Applicant to provide 30 rental units and 108 home-ownership units. The Applicants seeks to modify this to 46

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rental units and 92 homeownership units. As a result, 16 of the units approved as homeownership units will become rental units. All 46 of the rental units will be reserved for and made affordable to households having 60% or less of AMI. The reason for this change is that DHCD plans to expand the redevelopment area to include all of the Highland Addition project rather than simply the unimproved PUD parcel. The additional land, which comprises the balance of the Highland project, contains a total of 118 distressed public housing units. These additional units will be included in the HOPE VI application, but are not included in the PUD. The Application asserts that with these additional units, DCHD needs to modify the tenure mix on the PUD site to achieve a balanced development overall. The Application asserts that this minor modification will assure a good mix of market and subsidized/rental and homeownership units dispersed throughout the overall Highlands development.

4. There was no opposition to the extension or the modification. Advisory Neighborhood Commission (“ANC”) 8E was served by the Applicant with the Application. The ANC submitted a written report in support of the modification on November 18, 2009.
5. The Office of Planning (“OP”) submitted a report dated November 13, 2009 in support of the Application. OP’s report stated there were no substantial changes in any of the material facts upon which the Commission based its original approval that would undermine the Commission’s justification for approving the original PUD. OP reports that the granting of the extension, together with the approval of the minor modification, will allow the Applicant to pursue HOPE VI and additional financing for the project.

CONCLUSIONS OF LAW

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

The Commission concludes the Application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the Application on November 2, 2009. The only party to the Application, ANC 8E, provided comments to the Commission on November 18,

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2009 prior to the expiration of the 30-day period so the running of the full 30 day period is unnecessary. The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.

The Commission concludes the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(c), the existence of a condition, circumstance, or factor beyond the Applicant's reasonable control that renders the Applicant unable to comply with the time limits of the PUD order. The Applicant experienced unforeseen site development costs, creating a budget gap for the project. Because of a change in economic conditions, the District government was unable to provide additional funding to close the budget gap. As a result, the Applicant is applying for a federal subsidy and unable to comply with the time limits of the original PUD Order. For these reasons, the Commission finds that the Applicant has satisfied the requirements on 11 DCMR § 2408.11(c).

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163. D.C. Official Code §6-623.04), to give great weight to OP recommendations. OP recommended approval of the modification and time extension request and the Commission concurs in its recommendation.

Upon consideration of the record in this Application, the Commission finds that the proposed minor modification is consistent with the intent of the previously approved Zoning Commission Order No. 06-45. The Commission concurs with the Applicant that approving the Modification Application is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030. The Commission further 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 and Zoning Act.

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 minor modification and a three-year time extension of an approved PUD. The approval of this modification is subject to the following condition which replaces Condition 4 in Z.C. Order 06-45:

- (4) Forty-six (46) of the dwelling units will be rental units affordable to households earning 60 percent or less of Area Median Income. The remaining ninety-two (92) units will be homeownership units.

The approval of the time extension is as follows:

The final PUD approved by the Commission shall be valid until December 28, 2012, within which time an application shall be filed for a building permit, as specified in § 2409.1. Construction shall start no later than December 28, 2013. If either of these two events does

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not occur when required and no further request for an extension is made and granted, the PUD approval shall expire.

This time limit replaces Condition 12 of Z.C. Order No. 06-45.

All other provisions and conditions of Z.C. Order No. 06-45 remain in effect.

On November 23, 2009, upon the motion of Commissioner May, as seconded by Commissioner Schlater, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on March 26, 2010.