

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

CONSTRUCTION CODES COORDINATING BOARD

NOTICE OF SCHEDULED MEETING

The Construction Codes Coordinating Board will be holding a scheduled meeting on Thursday, April 15, 2010 at 10:00 am.

Please note the new meeting location: The meeting will be held at 1100 Fourth Street, SW, 5th Floor, Washington, D.C. 20024. The location is on the Metro Green Line, at the Waterfront/SEU stop. Limited paid parking is available on site.

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

The meeting schedules for the Construction Codes Coordinating Board’s subcommittees, the Technical Advisory Groups, are also posted on the DCRA website at the same address and link noted above.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**NOTICE OF FUNDS AVAILABILITY****Adult and Family Education Program Grant**

The Office of the State Superintendent of Education (OSSE) will issue a request for applications for Adult and Family Education grants to enhance the delivery of adult literacy activities (Adult Basic Education (ABE); Adult Secondary Education (ASE); General Education Development (GED); National External Diploma Program (NEDP); English Literacy, Integrated English Literacy/Civics Education (EL Civics); Family Literacy; and Workplace Literacy) integrated with ancillary, workforce development and postsecondary education transition services in the District of Columbia.

The Adult and Family Education Program is a federal initiative authorized by Title II, Adult and Family Education Act as amended by the Workforce Investment Act of 1998, effective August 7, 1998, 112 Stat.936; 20 U.S.C. §9201; and a local initiative authorized by the Public Education Reform Amendment Act of 2007, D.C. Law 17-9, effective June 12, 2007 amending the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §38-2608).

The Request for Application (RFA) will be released on or after April 16, 2010 and will be available at the OSSE website at <http://www.osse.dc.gov> under Adult and Family Education, or through the District of Columbia Office of Partnerships and Grants Development website at <http://opgd.dc.gov>, under “District Grants Clearinghouse,” or by contacting Tracy Winston, OSSE, Adult and Family Education at tracy.winston@dc.gov.

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: 4D05

Petition Circulation Period: **Monday, April 5, 2010 thru Monday, April 26, 2010**

Petition Challenge Period: **Thursday, April 29, 2010 thru Wednesday, May 5, 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**ANNOUNCEMENT OF COMMENT PERIOD FOR 2010 303(D) LIST**

Section 303(d) of the federal Clean Water Act and regulations developed by U.S. Environmental Protection Agency (EPA) requires states to identify all waters that do not meet water quality standards even after all pollution controls required by law are in place. Waterbody segments not meeting the appropriate water quality standards are considered to be impaired. The law requires that states place these impaired segments on a list referred to as the 303(d) List (2010 List). Development of Total Maximum Daily Loads (TMDL) for the water bodies on the List may be required.

A draft 303(d) List for the District of Columbia has been prepared. Copies of the 2010 List are on file and may be inspected at the Martin Luther King, Jr. Library, 901 G St., NW, Washington, DC 20001 during normal business hours. In addition, the document can be downloaded at the following website address <http://ddoe.dc.gov> under the Information section at the Public Notices & Hearings link.

The comment period for the list is April 1, 2010 to April 30, 2010. Persons wishing to comment on the 2010 List are invited to submit written comments, by mail, to:

**District Department of the Environment
Water Quality Division
1200 First Street, NE, 5th Floor
Attention: 2010 303(d) List
Washington, DC 20002**

Such written comments are to be received on or before April 30, 2010.

Following the 30-day comment period, the Water Quality Division will consider the comments received to finalize the list. The final list will be sent to the EPA for review and approval.

For additional information, call 202-535-2600.

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 a permit to The Berg Corporation to install and operate a KOMATSU Crusher BR550JG-1 to crush concrete for recycling at the Bruce Monroe school site, located at 3012 Georgia Avenue, NW, Washington, DC 20001.

The application to install and operate the KOMASU Crusher BR550JG-1 and the draft permit are 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 May 2, 2010 will be accepted.

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

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2010

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, Washington, DC, intends to issue a permit to operate one (1) 400 kW diesel fired emergency generator to Potomac Creek Associates L.L.C. to be located at 490 L'Enfant Plaza East, SW, Washington DC 20024.

The application to operate the generator and the draft permit are 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 May 3, 2010 will be accepted.

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

FRIENDSHIP PUBLIC CHARTER SCHOOL**NOTICE OF REQUEST FOR PROPOSAL****Wireless Internet Access**

Friendship Public Charter School is seeking bids from prospective candidates to provide wireless internet access in accordance with requirements and specifications detailed in the Request for Proposal.

An electronic copy of the full Request for Proposal (RFP) may be requested via e-mail from Valerie Holmes at vholmes@friendshipschools.org call 202-281-1722

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**DEPARTMENT OF HUMAN SERVICES
FAMILY SERVICES ADMINISTRATION**

**PUBLIC NOTICE OF NEW
PERMANENT SUPPORTIVE HOUSING PLACEMENTS**

The District of Columbia Department of Human Services Announces the Availability of 150 new placements for Individuals and 25 new placements for Families in the Department of Human Services, Permanent Supportive Housing Program, and Information About How Individuals and Families May Take or Update a Vulnerability Assessment, in order to be Considered for referral to the Permanent Supportive Housing Program.

The District of Columbia, Department of Human Services (DHS), Family Services Administration (FSA), hereby gives public notice of 150 new placements for individuals and 25 new placements for families in its Permanent Supportive Housing Program (PSH Program).

Referral for available placements in the PSH Program shall be prioritized based on an individual's or family's score on a vulnerability assessment administered by the PSH Program. The highest scores shall be prioritized to receive the available referrals. Information provided in a vulnerability assessment may be subject to verification by the PSH Program.

DHS shall conduct vulnerability assessments with individuals and families in the District of Columbia living on the street and in shelters through at least April 9, 2010. Any person living in a District of Columbia shelter or on the street may take a vulnerability assessment. Any individual or family who has already completed a vulnerability assessment may update the assessment with new information.

How You Can Take or Update Your Vulnerability Assessment

- Individuals and Families in a shelter or other homeless services program should see the program's case manager, who will administer or update the vulnerability assessment.
- Individuals on the street or doubled up may take or update the vulnerability assessment at:
 - **Community Council for the Homeless at Friendship Place**
4713 Wisconsin Avenue NW *Mondays (9:00 AM – 11:30 AM)*
 - **Thrive DC at (St. Stephen's Church)**
1525 Newton Street NW *Wednesdays (11:00 AM – 2:00 PM)*
 - **Community for Creative Non-Violence**
425 2nd Street NW *Fridays (9:00 AM – 1:00 PM)*

- Families not residing in shelter or in another homeless services program may take or update the vulnerability assessment at the Virginia Williams Family Resource Center, 920 Rhode Island Avenue, NE on Tuesdays and Thursdays from 10:00 a.m. to 1:00 p.m., or call Kareen Taybron at 202-698-4140 to make an appointment.

For more information about obtaining, taking, or updating a vulnerability assessment in order to be considered for the DHS Permanent Supportive Housing Program, please contact by telephone or email:

Bettie Berkely
Program Support Specialist
Department of Human Services
Family Services Administration
645 H Street, NE,
Washington, DC 20002
bettie.berkely@dc.gov
(202) 698-4166

OFFICE OF VICTIM SERVICES
Executive Office of the Mayor

PUBLIC NOTICE OF FUNDING AVAILABILITY

Victim Assistance Fund (VAF). The Office of Victim Services announces the availability of grant funds under the fiscal year 2011. The Victim Assistance Fund will sustain and/or expand the provision of direct services to victims of violent crime. Eligible applicants are non-profit, community-based organizations and/or District government agencies located in the District of Columbia that provide direct services to crime victims. The Request for Applications (RFA) will be available electronically beginning **Thursday, April 15, 2010** at <http://ovs.dmps.jdc.gov>. The deadline for applications is **3:00 p.m. on Monday, May 17, 2010.**

For more information, contact Daniza Figueroa, Program Manager, Office of Victim Services at (202) 442-4936 or Daniza.Figueroa@dc.gov

The Services*Training*Officers*Prosecution (S*T*O*P) Violence Against Women Formula Grant. The Office of Victim Services announces the availability of federal grant funds under the fiscal year 2011 S*T*O*P VAWA Formula Grant program. The goal of the S*T*O*P Program is to encourage a coordinated community response between members of law enforcement, prosecution, courts, and victim service agencies to address the issues of domestic violence, stalking, sexual assault and dating violence. Eligible applicants are faith-based and community-based non-profit, victim service organizations within the District of Columbia and DC governmental agencies. The Request for Applications (RFA) will be available electronically beginning **Thursday, April 15, 2010** at <http://ovs.dmps.jdc.gov>. The deadline for applications is **3:00 p.m. on Monday, May 17, 2010.**

For more information, contact Jennifer Pollitt-Hill, Program Manager, Office of Victim Services at (202) 727-0957 or Jennifer.Pollitt-Hill@dc.gov

Crime Victim Assistance Grant Program (VOCA). *The Office of Victim Services* announces the availability of grant funds under the fiscal year 2011 Crime Victim Assistance Grant Program to improve the treatment of victims of crime by providing victims with the assistance and services necessary to speed their restoration after a violent criminal act, and to support and aid them as they move through the criminal justice process in the District of Columbia. Eligible applicants are non-profit, community-based organizations and/or District government agencies located in the District of Columbia. The Request for Applications (RFA) will be available electronically beginning **Thursday, April 15, 2010** at <http://ovs.dmps.jdc.gov>. The deadline for applications is **3:00 p.m. on Monday, May 17, 2010.**

For more information, contact Daniza Figueroa, Program Manager, Office of Victim Services at (202) 442-4936 or Daniza.Figueroa@dc.gov

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

Application No. 17956 of Hamid Reza Ossareh, pursuant to 11 DCMR § 3104.1, for a special exception to allow a two-story rear addition to an existing one-family detached dwelling under § 223, not meeting lot area (§ 401) and lot occupancy (§ 403) requirements in the R-2 District, at premises 4355 Fessenden Street, N.W. (Square 1655, Lot 22).¹

HEARING DATES: September 8, 2009, November 24, 2009²

DECISION DATE: November 24, 2009

DECISION AND ORDER

This self-certified application was submitted on April 14, 2009 by Hamid Reza Ossareh (“Applicant”), the owner of the property that is the subject of this application (“subject property”). The application requests special exception relief pursuant to 11 DCMR § 223, in order to enable the Applicant to construct a two-story rear addition to his one-family dwelling. The subject property is nonconforming for lot area and the addition will put the lot occupancy of the dwelling over the maximum permitted in this R-2 zone.

The Board of Zoning Adjustment (“Board” or “BZA”) scheduled a hearing on the application for September 8, 2009, which was continued to, and completed on, November 24, 2009. At the close of the hearing, the Board voted 4-0-1 to grant the application, subject to two conditions, one of which was voted on separately.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 14, 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”) 3E, the ANC within which the subject property is located, Single Member District 3E03, and the Councilmember for Ward 3. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *D.C. Register*, and, on June 8, 2009, sent such

¹Previously known as “Lot 803” in Square 1655.

²The hearing on this application was originally scheduled for September 8, 2009. On that date, the Board of Zoning Adjustment granted the Applicant’s request to continue the hearing and also granted the opponent party status requests of two neighbors. In trying to re-schedule the hearing, there was some question of when all parties would be able to attend, so the Board tentatively scheduled the hearing for October 20, 2009, with an alternative date of November 24, 2009. On September 10, 2009, one of the party opponents informed the Office of Zoning that she would be unavailable on October 20th, but could be present at the hearing if it took place on November 24th. Therefore, at a September 15, 2009 special public meeting, the Board announced that the hearing was re-scheduled to November 24, 2009.

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notice to the Applicant, ANC 3E, and all owners of property within 200 feet of the subject property.

Requests for Party Status. Two neighbors requested, and were granted, opponent party status by the Board. They acted as one consolidated party and alleged that the Applicant's planned addition would negatively impact the sunlight and airflow to their properties, and their privacy, thus reducing their property values. They also averred that the addition would exacerbate drainage problems because the increased building footprint would reduce pervious surface area on the subject property. They allege, as their "overriding concern," that the addition is out of proportion with other structures in the neighborhood because it is, in their opinion, too massive, particularly on the subject property, which is the smallest lot in the Square and is located on a corner.

Applicant's Case. The Applicant's architect presented the case and explained how the special exception test was met.

Government Reports. The Office of Planning filed a report with the Board on November 17, 2009, recommending approval of the special exception request. Exhibit No. 31. OP points out that the subject property is a corner lot, bounded by streets to the south and west. To the north, the required rear yard will be provided and, to the east, the required side yard will be provided, therefore, OP opines that neighboring structures' light and air should not be negatively impacted. OP also determined that the privacy of use and enjoyment of neighboring properties should not be compromised by the proposed addition, but cautioned the Applicant to be sure that windows on the addition were not placed directly opposite windows on the neighboring dwelling to the east. OP also recommended that the Applicant use a semi-transparent or frosted glass on the second-story window of the addition facing the eastern property line, as it is a bathroom window. The addition will be visible from 44th Street, N.W., but will be of the same height and stucco/siding exterior as the main dwelling, therefore OP concluded that the addition would not visually intrude on the character of the houses along the adjacent public ways.

No other government agencies filed reports with the Board.

ANC Report. ANC 3E filed a report with the Board on August 7, 2009, recommending denial of the special exception relief. The ANC report states that the proposed addition would negatively impact sunlight to the one-story rear addition of the adjacent dwelling to the east and would reduce airflow "through the backyards of the adjacent houses to the east." Exhibit No. 22, at 2. The ANC also avers that the windows on the addition will impact the eastern neighbor's privacy and that the overall bulk of the addition will "materially affect the visual aspect of the home in the context of the neighborhood." *Id.*, at 3. Lastly, the ANC lists several "anomalies" in the plans and supporting materials submitted by the Applicant, which it requests be cleared up.

BZA APPLICATION NO. 17956**PAGE NO. 3****FINDINGS OF FACT**The Property and the Surrounding Neighborhood

1. The subject property is located at address 4355 Fessenden Street, N.W., at the corner of Fessenden Street, N.W. and 44th Street, N.W., in an R-2 zone district, and in Square 1655, Lot 22.
2. The property is rectangular in shape, with a width of 40 feet, and a length of 70 feet, for a lot area of 2,800 square feet, but the minimum lot area required in this R-2 zone for a detached dwelling is 4,000 square feet, so zoning relief is necessary. 11 DCMR § 401.
3. The property is bounded by Fessenden Street to the south, but between the southern property line and Fessenden Street is an area of public space approximately 33 feet wide.
4. The property is bounded by 44th Street to the west, but between the western property line and 44th Street is an area of public space approximately 18 feet wide.
5. The property is improved with a two-story detached one-family dwelling, with a one-story attached garage at its rear.
6. The dwelling on the property occupies approximately 39.6% of the lot, including the area covered by an open-sided front porch.
7. The property is set within a neighborhood of one-family detached and semi-detached dwellings.

The Applicant's Proposal

8. The Applicant proposes to demolish the rear attached garage and remove the existing paved driveway leading to it from 44th Street, and replace the garage and part of the current driveway area with a two-story rear addition.
9. The addition would increase the lot occupancy of the dwelling to 49.6%, where only 40% is permitted in this R-2 zone, necessitating zoning relief. 11 DCMR § 403.
10. The addition would not intrude into the required 20-foot rear yard, nor into the required eight-foot eastern side yard.³ 11 DCMR §§ 404 & 405, respectively.
11. The addition will be 27 feet, one inch high, and will extend approximately 17.25 feet from the rear of the dwelling, but will also include a dormer punched through the existing roof and facing onto Fessenden Street.

³No side yard is required on the western side of the dwelling or its addition because the property is a corner lot. 11 DCMR § 405.5.

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12. The addition will have three windows and a door on its west side, facing 44th Street, four windows and French doors on its north side, facing the rear yard, and two windows on its east side, one on each story, facing the eastern property line and the adjacent neighbor.
13. Once the addition is constructed, the Applicant plans to construct a new driveway leading from 44th Street to a parking pad in the property's rear yard.

The Special Exception Relief

14. Special exception relief, pursuant to 11 DCMR § 223, is necessary to permit the construction of the proposed addition on this too-small lot, which will result in a lot occupancy greater than the 40% permitted in this R-2 District.
15. The one-family detached dwelling on the property is a matter-of-right use. 11 DCMR §§ 300.3(a) & 201.1(a).
16. The proposed addition is modest in size and its footprint will not intrude into the required side or rear yards, allowing light and air to reach neighboring properties.
17. As the property is a corner lot, there will be no impact on privacy to the west and south. The rear wall of the addition will be 20.17 feet from the rear property line, which then abuts the rear yard of the neighbor to the north.
18. The addition will be set back approximately 10.42 feet from the eastern property line, in excess of two feet than what is required, and the windows on the eastern wall will be placed so as not to be directly opposite those in the adjacent dwelling.
19. The height of the addition will be slightly lower than the existing dwelling and will not be visible from Fessenden Street, except for the new dormer, which will come through the existing roof, not adding any height or significant bulk to the existing dwelling.
20. The addition will be visible from 44th Street, but will not overwhelm the original dwelling and will be clad in a matching stucco/siding exterior.
21. Roof drains on the addition will be connected to the main public storm line to help avoid an overflow of surface water and other drainage issues.
22. The area of the removed driveway will be landscaped, as will the ground area around the addition.
23. The proposed new driveway and rear parking pad will replace the attached rear garage and the curb cut and use of public space will need to be approved by the appropriate District agencies.

BZA APPLICATION NO. 17956**PAGE NO. 5****CONCLUSIONS OF LAW**Special Exception Relief

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

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)).

Section 3104 has two requirements. The first is that granting the special exception will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps. This requirement is met as the one-family detached dwelling is a matter-of-right use. Section 3104’s second requirement, that the special exception relief will not adversely affect the use of neighboring property, is essentially the same as that of § 223.2, which states that the addition shall not have a substantially adverse effect on the use or enjoyment of neighboring properties.

The proposed addition will not have a substantially adverse effect on neighboring properties. The addition will put the dwelling’s lot occupancy over the maximum permitted 40%, but will be within the 50% lot occupancy permitted by § 223. The addition will also retain the minimum required rear yard and more than the minimum required side yard. The Zoning Regulations state the minimum measurements for required yard length or width in order to protect the light and air reaching dwellings, and these measurements are presumed to be sufficient to do so. The height of the addition will also be well under the 40 feet permitted in this zone and is slightly lower than the existing dwelling. The addition will add some massing to the existing dwelling, but is not so massive as to substantially affect the light and air reaching neighboring dwellings.

Nor will the proposed addition unduly compromise the privacy of use and enjoyment of neighboring properties. Again, there will be a significant open space of 10 feet between the eastern wall of the addition and the property line, and this, coupled with the abutting side yard of the eastern neighbor leaves a sufficient separation between the addition and this closest neighbor. That distance is enough to avoid an undue compromise of the neighbor’s privacy. The Applicant has also agreed to place his windows in such a way so as to avoid looking directly into the

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neighbor's dwelling and will use a semi-transparent glass for the second-story window overlooking the eastern property line.

One issue brought up by the opposition was past problems with water drainage in the area. The addition will be equipped with roof drains to collect and channel rain water. The drains will be connected to the main public storm line, avoiding surface water overflow and pooling and any water-collecting or channeling devices installed on the addition will be directed away from the adjacent neighbor to the east.

The addition will not be visible from Fessenden Street, N.W. Its eastern and western walls are set in slightly from the eastern and western walls of the existing dwelling, so it is tucked in behind the existing structure. The highest point of the addition's roof is slightly lower than the roof of the existing structure, and so is not visible from the front of the dwelling. The addition will be visible from 44th Street, N.W., but is not out of proportion with the existing structure or with other additions in the area. It will be sheathed in a stucco/siding exterior, matching the exterior of the dwelling, and it will not visually intrude on the character, scale or pattern of houses along either adjacent street, or in the neighborhood in general.

The proposed addition is modest in scale and character and will enhance the visual aspects and usefulness of this corner dwelling. The Board concludes that it meets all the requirements of both § 3104 and § 223.

Great Weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2008 Repl.). 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 approval of the special exception relief, and the Board agrees with this recommendation.

ANC 3E recommended denial of the relief. The ANC report alleged that the addition would reduce the sunlight reaching the eastern neighbor's rear addition and would block the airflow through the several backyards of the houses to the east of the subject property. The amount of direct sunlight reaching the neighbor to the east may be affected by the addition, but it will not be "unduly affected." § 223.2(a). Moreover, the addition is set far enough away from the eastern neighbor so as to have little effect on ambient light reaching the neighbor's dwelling. The ANC's statement concerning airflow to backyards to adjacent houses to the east seems to presume that air only flows from west to east, and it would be almost impossible to judge what effect, if any, this addition might have on distant back yards.

The ANC also claims that the eastern-facing windows in the addition will compromise the neighbor's privacy and that the bulk of the addition is "too much" for this small corner lot. The

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addition's windows will be, at a minimum, over 10 feet from the neighbor's dwelling, and will be placed so as not to provide a direct line-of-sight into the latter. The addition's second-story window will be of semi-transparent glass, further protecting the neighbor's, and the Applicant's, privacy. As to the bulk of the addition, it will not overwhelm the existing dwelling, it maintains a 20-foot rear yard, and it is situated next to an 18-foot swath of open public space, and then a street right-of-way. The subject lot may be smaller than others in the area, but even so, there will be retained a large amount of open space around the addition, and it is not so massive as to look out-of-character with the neighborhood. Therefore, the Board does not find the ANC's advice to be persuasive.

For all the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to a special exception pursuant to §§ 3104 and 223 for relief from the lot area and lot occupancy requirements of §§ 401 and 403, respectively. Accordingly, this application, pursuant to Exhibit No. 21, Plans, is hereby **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. Gutters, downspouts, or other water collection or channeling devices installed on the addition shall be directed away from the adjacent property to the east of the subject property.
2. The second-story window on the eastern wall of the addition shall be of frosted, or other semi-transparent or translucent glass, to ensure privacy.

**VOTE TO APPROVE THE
APPLICATION AND TO
IMPOSE CONDITION****NUMBER 1:****4-0-1**

(Marc D. Loud, Shane L. Dettman, Meridith H. Moldenhauer and Anthony J. Hood to Approve; No fifth Board Member participating or voting.)

**VOTE TO IMPOSE
CONDITION****NUMBER 2:****3-1-1**

(Marc D. Loud, Shane L. Dettman and Anthony J. Hood to impose condition #2; Meridith H. Moldenhauer to Deny. No fifth Board Member 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 26, 2010

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

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

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

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

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-08A**

Z.C. Case No. 09-08A

**Modification of Approved Planned Unit Development and PUD-
Related Map Amendment for Property Located in Square 3831,
Lot 47 ("Northern Parcel")**

March 8, 2010

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public meeting on March 8, 2010. At the public meeting, the Commission approved an application from Brookland Artspace Lofts, LLC (the "Applicant") requesting a clarification and a minor modification to an approved planned unit development ("PUD") and related zoning map amendment for property located at 3305-3313 8th Street, N.E. (Square 3831, Lot 47) ("Northern Parcel"). The application was included on the Commission's consent calendar pursuant to 11 DCMR § 3030.1. For the reasons stated below, the Commission hereby approves the clarification and minor modification.

FINDINGS OF FACT

1. The original PUD application, Z.C. Case No. 09-08, approved a consolidated PUD for the Northern Parcel. It simultaneously approved a first-stage approval for property located at 3225 8th Street, N.E. (Square 3832, Lot 803) and a one-block portion of Kearny Street immediately east of 8th Street (collectively, "Southern Parcel"). The Commission also approved a PUD-related map amendment for both the Northern and Southern Parcels. The PUD site is currently improved with Brookland Studios, located on the Northern Parcel, and Dance Place, located on the Southern Parcel. The PUD calls for redeveloping both sites. Brookland Studios will be razed and replaced with a building containing artist live-work units. Dance Place will be replaced with a dance studio. Advisory Neighborhood Commission ("ANC") 5C was the only party in the PUD case.
2. On February 19, 2010, the Applicant filed an application requesting a clarification of one aspect of the consolidated PUD approval, and modification of Condition 11 of the PUD Order, which also pertains to the consolidated portion of the PUD.
3. The consolidated PUD was approved for 41 artist live-work units. The Applicant testified at the hearing that it intended to set aside the two ground-floor units for long-term use by Dance Place as offices or classrooms while its new facility is constructed, and once the new Dance Place facility is built, for artist and residential uses. Approval of this set aside and use was inadvertently omitted from Zoning Commission Order No. 09-08, which approved the PUD.
4. The Applicant sought clarification that this set aside and use was to be permitted.
5. Second, Condition 11 of the Zoning Commission Order No. 09-08 provided that:

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The Applicant shall reserve 50% of the residential units for households with an income no greater than 60% of AMI and the other 50% of the residential units for households with an income no greater than 50% of AMI.

6. The Applicant requests a modification to this condition to reduce the number of affordable units from 41 to 39, and to no longer require that any of the 39 remaining units be set aside for households making no greater than 50% of AMI. As a result, all of those units will be set aside for household of working artists earning between 51% and 60% of AMI.
7. The two market rate units would be those initially reserved for the use of Dance Place and would be located on the ground floor.
8. The Applicant's letter demonstrated to the Commission's satisfaction that the project would not be financially feasible if all 41 units were affordable and if any of the 39 affordable units were reserved for households earning less 51% of AMI.
9. On February 23, 2010, the Applicant filed a letter from the Department of Housing and Community Development supporting its assertion that the project would not be financially viable without increasing the affordability levels of half of the units.
10. The Office of Planning did not submit a report on the application.
11. ANC 5C did not take a formal position on the modification application.
12. At the March 8, 2010 public meeting the Commission voted to approve the clarification and the modification application as a minor modification.

CONCLUSIONS OF LAW

The Applicant seeks a clarification that two of the 41 units may be set aside for the use of Dance Place for its offices or classrooms or as residences. The Commission agrees with the Applicant that the failure of Zoning Commission Order No. 09-08A to specifically authorize this set aside and use was inadvertent. Accordingly, the Commission through this Order modifies Condition No. 11 to allow for the reservation of two ground floor units for Dance Place.

The Commission also approved the modification of that condition to allow the two reserved units to be sold or rented at market rate and to eliminate the requirements that half of the 39 remaining units be set aside for households making no greater the 50% of AMI. Based upon the evidence presented, the Commission concludes that the Applicant has demonstrated that the project will not be economically feasible with half of the units made affordable at such deep levels of affordability.

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The Commission further concludes that the modification is minor in nature, and therefore required no hearing. Even with the modification, this project will be providing at least 12 times the amount of affordable housing that would otherwise be required for the Northern Parcel under a matter-of-right development. Further, the affordability limits are significantly lower than what would otherwise be required in the C-2-B Zone District. The Commission finds that the affordable housing package is still a significant component of the project and is a significant benefit and amenity in light of what would otherwise be required. The value of the project's benefits and amenities, as modified, still justifies the zoning relief requested.

The Commission concludes that the proposed modification 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. The approval of the modification is not inconsistent with the Comprehensive Plan.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of this application for clarification and modification of the approved PUD project in Zoning Commission Order No. 09-08. The approval of this application is granted so that Condition 11 of Zoning Commission Order No. 09-08 will read as follows:

11. The Northern Parcel shall consist of a residential building with 41 units. Two units on the ground floor may be market rate units and may also be made available to Dance Place for use as offices, classrooms, or residences by visiting artists. The remaining 39 units shall be artist live-work units reserved for households with an income no greater than 60% of AMI

On March 8, 2010, on a motion made by Chairman Hood and seconded by Vice-Chairman Keating, this Order was **ADOPTED** by the Zoning Commission at its public meeting by a vote of 5-0-0 (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Michael G. Turnbull, and Peter G. May to adopt).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on April 2, 2010.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

AND

Z.C. ORDER NO. 09-16

Z.C. Case No. 09-16

(Text Amendment – 11 DCMR)

**Text Amendment to Permit Car Sharing Parking Spaces as a Matter of Right Use in the R,
CR, and SP Zone Districts**

March 22, 2010

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.