

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17446A of Pauline S. Ney, pursuant to 11 DCMR § 3103.1,¹ for variances from lot occupancy requirements under § 403, and nonconforming structure provisions under §§ 2001.3 and 2002.4, and for a special exception pursuant to § 2003,² to construct four residential units above existing one-story, predominantly retail, structures in the R-5-B District at premises 2160-2162 California Street, N.W. (Square 2530, Lots 99 and 100).

HEARING DATES:	March 13, 2006, April 18, 2006
DECISION DATE:	June 6, 2006
EFFECTIVE DATE OF ORDER 17446:	May 14, 2007
DATE OF RECONSIDERATION:	July 3, 2007
DATE OF FIRST LIMITED HEARING:	July 24, 2007
DECISION DATES FOR RECONSIDERATION AFTER FIRST LIMITED HEARING:	September 4, 2007, September 25, 2007, October 2, 2007
DATE OF SECOND LIMITED HEARING:	November 20, 2007
DECISION DATE FOR RECONSIDERATION AFTER SECOND LIMITED HEARING:	December 18, 2007
DATE OF FINAL DECISION ON RECONSIDERATION:	February 5, 2008

**COMBINED ORDER GRANTING RECONSIDERATION AND REHEARING,
DENYING STAY, AFFIRMING RELIEF GRANTED BY ORDER NO. 17446,
AND GRANTING SPECIAL EXCEPTION RELIEF PURSUANT TO § 2003**

¹Order No. 17446 erroneously cited 11 DCMR § 3104.1 in the caption of the case. The correct citation is 11 DCMR § 3103.1.

²The Board determined that this relief was necessary, added it to the application, and granted it, at the February 5, 2008 decision meeting, as well as, at the same meeting, affirming the relief originally granted by Order No. 17446.

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On May 14, 2007, the party-opponent, The Woodrow Cooperative Association, (“movant”), representing the residents of the Woodrow Building, adjacent to the property at 2160-2162 California Street (“subject property”), filed a motion for reconsideration and rehearing in Board of Zoning Adjustment (“Board” or “BZA”) Case No. 17446. The movant alleged that, after the closing of the record in the case, new evidence had come to light which would require a change in the type of relief needed by the Applicant, and therefore would change the analysis engaged in, and possibly the decision rendered by, the Board. The movant also requested a stay of the effectiveness of Order No. 17446, but did not present any arguments to support this request.

On July 3, 2007, the Board denied the stay, but granted the reconsideration and decided to hold a limited hearing to address the new evidence, and what effect, if any, it had on the relief granted by Order No. 17446. This limited hearing was held on July 24, 2007 (“first limited hearing”), but did not enable the Board to make a decision on the issue before it. A second limited hearing (“second limited hearing”) was therefore held on November 20, 2007 to further address the effect, if any, of the new evidence on the relief granted by Order No. 17446

Because of the protracted nature of the proceedings in this case, the Board will first set out the chronology of those proceedings, then will set forth the necessary facts and conclusions of law.

Except as otherwise specifically noted, the Board incorporates herein by reference Order No. 17446 in its entirety.

Procedural History

1. The Woodrow Cooperative Association, movant herein, had been granted party-opponent status in Case No. 17446.
2. Except for certain documents requested by the Board, the record in Case No. 17446 was closed at the close of the hearing, on April 18, 2006.
3. The decision of the Board was set for, and was made on, June 6, 2007. It was on that date that the Board granted the application, resulting in Order No. 17446 (“Order”).
4. The day before the decision meeting, however, on June 5, 2007, the movant filed with the Board a letter explaining that it had discovered new evidence relevant to the Board’s decision in the case, and which might actually go to the heart of the case by changing the nature of the relief required by the Applicant. *See*, Exhibit No. 95, Second Attachment.
5. The Board declined to consider the new evidence during the June 5, 2007 decision meeting, and instead, deliberated and granted the application, but also invited the movant to, at the appropriate time, file for rehearing and/or reconsideration of the decision.

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6. Order No. 17446 was issued on May 4, 2007 and granted the relief requested by the applicant, Pauline S. Ney (“Applicant”), *to wit*: three variances pursuant to 11 DCMR § 3103, one from § 403, to permit an over-maximum lot occupancy of the first floor of the addition proposed to be added to the building on the subject property, one from § 2001.3, to permit an addition to the building even though the existing building is nonconforming as to lot occupancy, and one from § 2002.4, to permit structural alterations to the building, even though it is nonconforming.
7. Pursuant to 11 DCMR § 3126.2, on May 14, 2007, the movant filed its motion for reconsideration, rehearing, and stay of the order (“motion”).
8. The movant alleged that it had uncovered evidence of a conforming residential use in the basement of the building on the subject property, the existence of which had not been known at the time of the hearing in this case. The movant alleged that the presence of this conforming residential use, when the Applicant had erroneously indicated that the subject building housed only nonconforming uses, necessitated use variance relief, and not only area variance relief, as had been requested and granted by Order No. 17446. Exhibit No. 99.
9. The Applicant filed an opposition to the motion (“opposition”) on May 21, 2007. In its opposition, the Applicant did not deny or refute the allegation of a residential use in the basement. Exhibit No. 103.
10. On May 23, 2007, the Sheridan-Kalorama Historical Association, also a party-opponent in the case, filed a letter in which it stated that it “supports and joins” in the motion for reconsideration. Exhibit No. 104.
11. On June 1, 2007, the movant filed a response to the Applicant’s opposition to the motion (“movant’s response to opposition”). Exhibit No. 105.
12. On June 28, 2007, the Applicant filed a supplemental response in opposition to the motion (“Applicant’s 6/28/07 supplemental opposition”). In this filing, the Applicant alleged that the new evidence of a basement residential use is irrelevant because it has no bearing on the approval of the relief granted in Order No. 17446. Exhibit No. 107.
13. On July 3, 2007, Advisory Neighborhood Commission (“ANC”) 2D, the ANC within which the subject property is located, and automatically a party to this case, filed a letter recommending that the Board grant the motion and reconsider the case. Exhibit No. 108.
14. On July 3, 2007, the Board deliberated on the motion and denied the stay, but granted reconsideration and a further limited hearing, which was set for July 24, 2007 (“first limited hearing”).

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15. The first limited hearing was limited to the issues of whether there was a conforming residential use in the basement, and if it existed, what, if any, bearing it would have on the relief granted by the Board in Order No. 17446.
16. On July 10, 2007, in response to questions raised by the Board at the July 3, 2007 decision meeting, the Applicant filed its second supplemental response in opposition to the motion (“Applicant’s 7/10/07 supplemental opposition”). Exhibit No.109. In this filing, the Applicant admitted that part of the basement, at 2162 California Street, was given over to a residential use, but explained more thoroughly why, in its opinion, this fact had no effect on the relief granted by the Board in Order No. 17446.
17. On July 20, 2007, ANC 2D filed a letter with the Board reiterating its opposition to the application. Exhibit No. 111.
18. On July 23, 2007, the day before the first limited hearing, the movant filed a response to the Applicant’s 7/10/07 supplemental opposition (“movant’s second response”), in which it again alleged that the existence of the basement residential use did affect the Board’s approvals granted in Order No. 17446. Exhibit No. 112.³
19. The first limited hearing took place as scheduled on July 24, 2007, and a decision on the substance of the reconsideration, *i.e.*, on the issues addressed at the first limited hearing, was set for September 4, 2007.
20. Due to the unexpected absence of a Board member, no quorum could be established on September 4, 2007 in order to decide the reconsideration, so the decision was re-set for a Special Public Meeting on September 25, 2007.
21. At the September 25, 2007 Special Public Meeting, the Board did not decide the substance of the reconsideration. Instead, it re-set the decision date for October 2, 2007 and requested a clear and accurate plan and textual description of the basement, depicting the uses therein and the areas they occupy.
22. The Board again did not decide the substance of the reconsideration on October 2, 2007. Still dissatisfied with the clarity of the evidence presented, the Board set a date of November 20, 2007 for a second limited hearing (“second limited hearing”), to address the specific issue of what use currently exists in the portion of the basement at 2162 California Street that was not known to have been used for residential purposes.
23. On November 19, 2007, ANC 2D filed a letter of the same date reiterating its opposition to the application and also requesting its dismissal, because, in the opinion of the ANC, the application had become so confused as to make “moving forward on [it] meritless.” The ANC suggested dismissal and re-application by the Applicant.

³The filings mentioned in this chronology do not constitute all the filings made during these proceedings.

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24. The second limited hearing was held as planned on November 20, 2007, and a decision date set for a Special Public Meeting on December 18, 2007.
25. At the second limited hearing, the Applicant submitted a revised plan showing that the only area to remain non-residential, and therefore nonconforming, in the basement, had been moved to a part of the basement at 2160 California Street, which is currently used for, and has always been used for, a commercial, nonconforming, use. Exhibit No. 131. The Applicant requested that the Board accept, in lieu of any earlier plan, this new basement plan as the plan on which relief be granted/affirmed in this application. *See*, 11 DCMR §§ 3125.7 and 3125.8.
26. At the Special Public Meeting on December 18, 2007, the Board declined to make a decision and instead, asked the parties to brief the question of whether special exception relief pursuant to 11 DCMR § 2003 was required. The question arose because the deli/grocery, currently on the ground floor of 2160 California Street, will be moved to the ground floor of 2162 California Street, and although the ground floor of 2162 was continuously devoted to commercial use in the past, it was devoted to the real estate office use – a *different* commercial use from the grocery to which the area will be devoted in the future.
27. The Board afforded the parties the opportunity to file submissions addressing the necessity of relief pursuant to § 2003.
28. The Applicant filed a pleading addressing § 2003, in which it opined that special exception relief pursuant to § 2003 was unnecessary, but in which it also requested the Board's permission to amend its application to seek such relief if the Board deemed it necessary. Exhibit No. 135.⁴
29. At the Public Meeting held on February 5, 2008, the Board decided that special exception relief pursuant to § 2003 was necessary and added that relief request to the application.
30. At the Public Meeting on February 5, 2008, the Board then made its final decision on the substance of the reconsideration. The Board found that the new evidence did not affect the relief granted in Order No. 17446, and voted to affirm that relief. The Board specified that it did not find that a use variance was necessary, but it did find that special exception relief pursuant to § 2003 was necessary. After analyzing the provisions of § 2003, the Board granted relief pursuant to that section. The Board also specified that certain facts set forth in Order No. 17446 would need to be modified to reflect the reality of the past residential use in the basement.

⁴The movant and allied parties did not file anything with the Board regarding the necessity for § 2003 relief. They, instead, filed requests for an extension of time to file and for a continuance because one of their representatives had been taken ill. Exhibits Nos. 136 and 138. These requests were denied.

Revisions to Findings of Fact set forth in Order No. 17446

1. Finding of Fact No. 5 is replaced by the following new Finding of Fact No. 5: Both buildings will be retained by the Applicant and both are nonconforming as to structure. Both buildings also house a principal use that is commercial, and therefore, nonconforming, but a small portion of the basement in 2162 California Street has been used for residential purposes.
2. New Finding of Fact 7a. is inserted between Finding of Fact No. 7 and Finding of Fact No. 8: For approximately the last 10 years, there has been a small area devoted to conforming residential use in the south half of the basement of the building at 2162 California Street.
3. Finding of Fact No. 35 is replaced by the following new Finding of Fact No. 35: This R-5-B zone permits, as a matter-of-right, only residential uses (with a few exceptions not relevant here), but the past use of the existing building for primarily commercial purposes means that there are no existing “core” elements, such as elevators or stairways, which are necessary for a residential use.
4. Finding of Fact No. 42 is replaced by the following new Finding of Fact No. 42: The retention of the deli/grocery further undermines the economics of the project because part of the basement must be maintained as its storage area, at an estimated monthly rent of only \$.50 per square foot.
5. The following new headings and Findings of Fact are added:

Basement Residential Use Does Not Affect Variances Granted

56. The deli/grocery is currently located on the ground floor of the building at 2160 California Street.⁵

⁵The Board reiterates that, as set forth in Finding of Fact No. 14, 2160 and 2162 California Street will be combined into one building with one basement, because, as a result of the Applicant’s development project, the building will NOT be “separated from the ground up or from the lowest floor up.” 11 DCMR § 199.1, definition of “Building.” Moreover, as the Applicant has pointed out throughout these proceedings, the building on the subject property houses a “combination of commercial occupancies separated in their entirety, ...[and] maintained in a single ownership,” and is therefore considered one structure. 11 DCMR § 3202.3.

However, to facilitate the clear discussion of the conforming vs. nonconforming uses within the basement of 2160 and the basement of 2162, these basements will be treated as separate in the new Findings of Fact set forth herein. The Board would like to make clear, however, that it finds that, notwithstanding the two address numbers, the two structures are one building for zoning purposes and that treatment of the basement areas as separate solely for the purpose of clarity should not be interpreted to mean or to imply that the Board finds that these two structures are separate buildings.

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57. The real estate office/occasional art gallery is currently located on the ground floor of the building at 2162 California Street.
58. The office use is being terminated and the deli/grocery is replacing it on the ground floor of the 2162 building.
59. The approximate total square footage of the combined basements of 2160 and 2162 California Street is 2,935 square feet.
60. The total square footage of the basement of 2160 California Street, approximately 1,511 square feet, has always been devoted to commercial uses.
61. The approximate total square footage of the basement of 2162 California Street is 1,424 square feet, of which approximately one-half – about 700 square feet – has, for approximately 10 years, been devoted to a conforming residential use.
62. This approximately 700 square feet in the south half of the 2162 basement was built out as a small living space for occasional use, with a bedroom, shower, and partial kitchen, not including any cooking facilities.
63. The remaining approximately 724 square feet of the 2162 basement appears to contain maintenance equipment for the building, as well as the building's utilities, such as the boiler. It also appeared to be partially empty and partially used for commercial storage of art and framing supplies.⁶
64. A revised basement plan submitted by the Applicant on November 20, 2007, shows that the same 700-square-foot area will remain devoted to a conforming residential use. *See*, Exhibit No. 131.
65. The only remaining area of nonconforming commercial use in either basement will be placed in the southeast corner of the basement of 2160 California Street, which has always been devoted to only commercial use. *Id.*
66. The Applicant is not changing any area that was in the past used for a conforming residential use to a nonconforming commercial use. *See*, 11 DCMR § 2003.4.
67. Nor is the Applicant expanding a commercial use into an area of the 2160 building that was not used for a commercial use in the past because the southeast corner of the basement of 2160 has been, and will continue to be, used for commercial storage. *See*, 11 DCMR § 2002.3.
68. The existence of the approximately 700-square-foot residential use area in the basement of 2162 California Street does not impact the lot occupancy of the ground

⁶The Board was invited by the opposition to “infer” or “assume” that, because part of the basement of 2162 was previously used for residential purposes, the entire basement of 2162 was previously used for residential purposes. However, the Board may not assume facts not in evidence and the evidence presented was not sufficient to persuade the Board that such an inference was warranted, particularly in light of the fact that there was evidence presented which tended to refute any such inference.

or upper floors of the building in any way, and therefore, does not impact the lot occupancy relief from § 403 granted by Order No. 17446.

69. Nor does the existence of the basement residential use impact the relief granted pursuant to § 2001.3(a), which was necessitated only because of the nonconforming lot occupancy of the existing building.
70. The existence of the approximately 700 square-foot residential use area in the basement of 2162 California Street does not impact the relief granted pursuant to § 2002.4, which permitted the internal structural alteration of the building.

Special Exception Relief

71. The Applicant is changing the nonconforming use on the ground floor of the 2162 building from the real estate office/occasional art gallery use to the deli/grocery use.
72. Subsection 2003 permits the replacement of one nonconforming use (here, real estate office) with another (here, deli/grocery), by special exception if the replacement use is permitted in the most restrictive zone district in which the existing use is permitted.
73. The most restrictive district in which the grocery use is permitted is a C-1 (Commercial) district. 11 DCMR § 701.4 (l). An office is also permitted in that same zone district, 11 DCMR § 701.6 (c).
74. As stated in Finding of Fact No. 55, the deli/grocery has operated at the subject property for approximately 90 years.
75. The deli/grocery does not produce any untoward noise, traffic, parking or loading issues, illumination, vibrations, or odors.
76. The slight relocation and continued operation of the deli/grocery will not create any new negative impacts.
77. The deli/grocery is patronized by members of the local community, many of whom reach it on foot.
78. The deli/grocery storage area will remain out-of-sight, in the basement of the 2160 building, where it has traditionally been located.

CONCLUSIONS OF LAW

After reconsidering the matter and opening the record for the limited purposes described above, the Board finds no reason to alter its determination to grant the variance relief requested. The variance analysis set forth in the Conclusions of Law in Order No. 17446 is not changed or discredited in any way by the fact that a small portion of the basement of 2162 California Street has been used for a conforming residential use. Nor does the existence of that use necessitate any new variance relief in order for the Applicant to proceed with its development project. The only new relief needed is special exception relief pursuant to § 2003, to permit the relocation of

the deli/grocery to the ground floor of the 2162 building, currently occupied by the real estate office/occasional art gallery use.

However, in view of the fact that the Board has added Findings of Fact to Order No. 17446 that concern the grounds for which reconsideration was sought, as well as the addition of the special exception relief granted, the Board also adds the following Conclusions of Law to that Order to be inserted on page 14 after the paragraph that begins with the phrase “Several individuals in opposition also alleged”

“No Use Variance Needed

The movant claims that a use variance is needed from § 2003.4 in order to permit the conforming residential use in the basement to be changed into a nonconforming commercial use. Exhibit No. 131 shows, however, that the Applicant is not planning to change the 700-square foot area of residential use back to a nonconforming use. Instead, that plan makes clear that this 700-square foot area will remain devoted to a conforming residential use. Therefore, the residential use area is to remain dedicated to conforming uses. Section 2003.4 protects the conforming residential use, providing that “[w]hen an existing nonconforming use has been changed to a conforming ... use, it shall not be changed back to a nonconforming use.” Since the continuation of the residential use is consistent with § 2003.4, no relief from that provision is needed by the Applicant.

Special Exception Relief

The additional relief is needed

Subsection § 2003.1 provides that that “a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right,” if approved by the Board pursuant to § 3104 and the specific conditions set forth in § 2003. The Applicant proposes to do just that. The plans show that the nonconforming deli/grocery use will be relocated to an area of the building that was devoted to a different nonconforming use in the past.

Although the application initially did not request relief pursuant to § 2003, it was later amended to do so. The Board will therefore determine whether the requirements of §§ 3104 and 2003 are met.

Analysis of special exception criteria

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in the judgment of the Board, 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 in accordance with the Zoning Regulations and Zoning Maps. 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 § 2003.

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 a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If an applicant meets its burden, the Board must ordinarily grant the application. *Id.*

As noted, § 2003 states that the Board may grant a special exception to change one nonconforming use to another nonconforming use "that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right," subject to the listed conditions. This first restriction is met here because both a grocery and an office are first permitted as matter-of-right uses in a C-1 (Commercial) District. *See*, 11 DCMR §§ 701.4(1) and 701.6(c). *See also*, 11 DCMR § 2003.6 (for order of decreased use restriction).

Echoing the general requirements set forth in § 3104, section 2003.2 states that the proposed use shall not adversely affect the present character or future development of the surrounding area, and § 2003.3 extends this idea by prohibiting any deleterious external effects from the proposed use. The deli/grocery use, with its storage, has existed at the subject property for approximately 90 years and is being retained to serve the local community. There is nothing in the record to show that a slight change in its location will have any effect on the surrounding area or will result in any deleterious effect whatsoever. Moving the deli/grocery from one part of the building to another has no effect on the exterior aspects of the building, other than perhaps the relocation of the grocery's sign, and will not cause any new noise, traffic, parking or loading considerations, illumination, vibrations, or odors.

The other provision of § 2003 relevant here states that, in a Residence District, the proposed use must be either a residential use or a "neighborhood facility." "Neighborhood facility" is not defined in the Zoning Regulations or in Webster's Unabridged Dictionary. Nevertheless, the Board readily concludes that this deli/grocery constitutes such a use. It is a small, corner grocery which has been in the same location

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for many years. It provides no parking, and most of its patrons reach it on foot. It is not designed to attract customers from any distance and primarily serves the basic needs of residents of the local community. *See*, Board of Zoning Adjustment Order No. 15412 (Application of Florida Avenue Partnership). *See also*, Board of Zoning Adjustment Order No. 15119 (Application of Ho Chae). The deli/grocery is a focal point of the community and has been variously described as “an essential part of the social and economic fabric and the prosperity of the community” (Exhibit No. 46) and “a great community gathering spot ... [and] the primary grocer for many community residents.” (Exhibit No. 65).

The Board concludes that the deli/grocery is a “neighborhood facility” and further concludes that the proposal to relocate it to a part of the building which was previously occupied by the real estate office meets the conditions set forth in § 2003.”

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 6-523.04 (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. The Office of Planning recommended approval of the final version of the application and did not change this recommendation in any way during the proceedings on reconsideration. The Board agrees with OP’s recommendation of approval.

ANC 2D, as explained in Order No. 17446, recommended denial of the application for several reasons, all of which were addressed in that Order. In a letter dated July 2, 2007, the ANC supported the re-opening of the hearing in this case to address the new evidence of basement residential use. Exhibit No. 108. The Board, obviously, agreed with this position. In a subsequent letter, received by the Board on July 20, 2007, the ANC reiterated its opposition to the application. Exhibit No. 111. In its last letter, dated November 19, 2007, the ANC, after restating its opposition to the application, requested that the Board dismiss the application, which it characterized as “marred by ... discrepancies” making it impossible “to ascertain fact from fiction in the present state of the case.” Exhibit No. 127.

The Board did not dismiss the application, but, agreeing with the ANC that possible factual discrepancies existed, instead chose to resolve any such discrepancies through a second limited hearing, and by adding and addressing further relief. Although the ANC may not agree with the Board’s ultimate resolutions of these questions, the Board has endeavored to articulate the ANC’s position and describe with particularity why it did or did not find the ANC’s viewpoint persuasive. In doing so, the Board has afforded the ANC the great weight to which it is entitled.

Based on the record before the Board and for the reasons stated in Order No. 17446, *incorporated by reference herein*, as well as those reasons stated above, after reconsidering the case and holding further hearings, the Board affirms the relief granted by Order No. 17446, and concludes that the Applicant has also met the burden of proof with respect to a special exception pursuant to §§ 3104 and 2003. It is therefore **ORDERED** that **THE RELIEF GRANTED BY ORDER No. 17446 IS AFFIRMED** and **RELIEF PURSUANT TO §§ 3104 AND 2003 IS GRANTED.**

VOTE: 3-0-2 (Ruthanne G. Miller, Curtis L. Etherly, Jr. and Shane L. Dettman⁷ to affirm and to grant. No fourth member and no Zoning Commission member participating or voting.)

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

Each concurring Board member has approved the issuance of this Order.

ATTESTED BY: _____


JERRILY R. KRESS, FAIA
Director, Office of Zoning

JUN 19 2008

FINAL DATE OF ORDER: _____

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

⁷Mr. Dettman, the Board's representative from the National Capital Planning Commission ("NCPC"), replaced the former NCPC member, Mr. John A. Mann II, whose tenure with the Board expired during the course of these proceedings.

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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.

LM

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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As Director ~~2006~~ ^{JUN 19 2008} the Office of Zoning, I hereby certify and attest that on _____, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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