

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17889 of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, pursuant to 11 DCMR § 3104.1, for a special exception under § 1553 to construct a new non-residential use consisting of a two-story church on a vacant lot in the Sixteenth Street Heights overlay, and a variance, pursuant to § 3103.2, from the off-street parking requirements under § 1553.2 in the SSH/R-1-B district at premises 4901 16th Street, N.W. (Square 2710, Lot 15).

HEARING DATE: March 10, 2009,
DECISION DATES: March 24, 2009 and April 28, 2009

DECISION AND ORDER

This application was submitted September 25, 2008 by the Corporation for the Presiding Bishop of the Church of Jesus Christ of the Latter-Day Saints, the owner of the property that is the subject of the application (“Applicant”). Following a public hearing, the Board voted 3-0-2 on April 28, 2009 to grant the application.

Preliminary Matters

Application. The application was initially filed pursuant to 11 DCMR § 3104 for a special exception under § 1553 to construct a new two-story church on a site located within the Sixteenth Street Heights overlay district and zoned SSH/R-1-B at 4901 16th Street, N.W. (Square 2710, Lot 15). The application was amended by letter dated January 7, 2009 to include a request for an area variance from the off-street parking requirements under § 1553.2(b)(2) to locate parking spaces in a required side yard. The Applicant subsequently stated the nature of the relief requested as a variance under § 1553.2(b)(2) to locate parking spaces on the lot between the principal building and a street right-of-way, rather than in a required side yard. The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Public Hearing. By memoranda dated September 26, 2008, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 4; Advisory Neighborhood Commission (“ANC”) 4C, the ANC for the area within which the subject property is located; and the single-member district ANC 4C02.

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A public hearing was scheduled for March 10, 2009. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on December 23, 2008 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 4C. Notice was published in the D.C. Register on January 9, 2009 (56 DCR 258).

Requests for Party Status. In addition to the Applicant, ANC 4C was automatically a party in this proceeding. The Board granted a request for party status in opposition to the application from the Carter Barron East Neighborhood Association (“CBENA”), whose members reside in the vicinity of the subject property.

Applicant’s Case. The Applicant provided testimony and evidence from Jeff Holmstead, a lay minister in the church; Brad Pierce of Stanmyre-Noel Architects, an expert in architecture and design; Amy Morris of T3 Design, an expert in transportation planning; and Lindsley Williams, an expert in land use and zoning. The witnesses described the Applicant’s search for a suitable location for a new chapel that would serve two local congregations, known as the Washington, D.C. Third Ward and the Mount Pleasant Branch; the activities planned at the new church; and the design and features of the planned building. The Applicant also submitted a supplemental traffic report to provide information about traffic and parking along 16th Street on Sundays and estimates of the expected rates of travel to the subject property by bus, bicycle, or on foot.

Government Reports. By report dated March 3, 2009 and through testimony at the public hearing, the Office of Planning recommended approval of the application subject to resolution of certain issues raised by DDOT. OP reviewed the application with respect to the property’s zoning, the intensity of the proposed use, the character of the surrounding neighborhood, and the standards for approval of variances and special exceptions. OP concluded that the proposed church could be established without adversely affecting the use and enjoyment of neighboring and nearby properties.

By memorandum dated March 2, 2009, the District Department of Transportation indicated a need for additional information from the Applicant concerning “the proposed parking access point located on Piney Branch Road near the intersection with Emerson Street, the impact on pedestrian and vehicular safety, and the schedule of the Sunday worship service in relation to other neighborhood places of worship.” Specifically, DDOT expressed concern that the Applicant’s planned curb cut on Piney Branch Road might be less than 60 feet from Emerson Street; that sight distances might be impaired by a wall the Applicant planned to install around its parking lot, potentially creating conflicts between vehicles, pedestrians, and bicycles at Piney Branch Road; and that the Applicant’s schedule of services (times of arrival and departure) might “create a burden on the neighborhood network of streets during the peak time of worship services on Sundays.” By memorandum dated April 23, 2009, DDOT reiterated its request for certain information from the Applicant but indicated no objection to approval of the application.

ANC Report. At a properly noticed meeting held February 10, 2009 with a quorum present, ANC 4C voted unanimously not to support the Applicant’s request for a special exception. The ANC submitted a letter dated February 21, 2009 that stated its position and noted opposition to

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the Applicant's proposal by some CBENA and other neighbors, but did not indicate the ANC's issues or concerns about the application.

Persons in support. The Board heard testimony and received letters from persons in support of the application, who commented favorably on the Applicant's church programs and planned new building.

Party in opposition. The party in opposition asserted that approval of the application would cause objectionable impacts on adjacent properties because the height and capacity of the new church building would overwhelm the existing community and change the aesthetics of the neighborhood through light and visual impacts. CBENA also contended that the church would create adverse impacts due to traffic, in part associated with the entrance to the parking area from Piney Branch Road, a narrow street with little room to maneuver, as well as the absence of sidewalks along portions of some streets.

Persons in opposition. The Board heard testimony and received letters from persons in opposition to the application, who generally cited the prevalence of institutional uses in the neighborhood, the height of the proposed church compared to nearby residences, and the likely adverse impacts of the Applicant's project on traffic.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 4901 16th Street, N.W., on the east side of 16th Street at the northeast corner of the intersection of 16th Street and Emerson Street, N.W. (Square 2710, Lot 15). The parcel is shaped generally like an inverted "T" and has 167 feet of street frontage on Piney Branch Road on the east and 75 feet on Farragut Street on the north in addition to 149 feet of frontage on 16th Street and 284 feet along Emerson Street. The lot is 284 feet wide and has an area of 56,971 square feet.
2. The subject property is currently unimproved. A building that had been used as a convent was demolished by the Applicant after acquiring the property in 2007. The remainder of the square is improved with one-family dwellings, three facing 16th Street, one facing Farragut Street, and one located at the corner of Farragut Street and Piney Branch Road. A public alley 16 feet wide extends from Farragut Street south to the Applicant's property at the middle of the square.
3. The subject property is located in the Sixteenth Street Heights overlay district and is zoned SSH/R-1-B. Most of the properties in the vicinity of the subject property are developed with one-family detached residences. A number of religious and other institutional uses are also located in the neighborhood.

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4. Sixteenth Street is a major arterial with two through travel lanes in each direction during the weekday commuter peak hours, when curbside parking is prohibited. Curbside parking is permitted on 16th Street on the weekends, creating one travel lane in each direction. Piney Branch Road, Farragut Street, and Emerson Street all serve lower volumes of traffic.
5. The subject property is served by four Metrobus routes along 14th and 16th Streets that are scheduled to operate every 10 to 15 minutes on Sundays. Bus stops are located on both sides of 16th Street at Emerson Street.

The Applicant's Project

6. The Applicant proposed to construct a new church building that will front on 16th Street. The two-story building will contain approximately 20,156 square feet of gross floor area (35,682 square feet including the cellar) and will be used for religious services and accessory uses, including religious instruction, meeting space, and cultural and recreational uses. The building will contain a sanctuary with 279 seats; classrooms for children and adults; a multi-purpose room, primarily for youth ministry activities as well as women's meetings, periodic social events, and selected community efforts; and clergy offices.
7. The height of the church building will be approximately 27 feet as measured from the finished grade level at the middle of the front of the building to the ceiling of the top story, or 56 feet, four inches as measured from the finished grade at the middle of the front of the building to the top of the ridge line on the roof, with a steeple that will rise to a maximum height of 105 feet.
8. Lot occupancy after construction of the church will be approximately 26 percent. The project will provide a rear yard of 75 feet and a side yard of 80 feet. The church building will be at a distance of 50 feet from the property line to the north (and thus about 57 feet from the closest residence to the north) and about 32 feet from the curb along Emerson Street to the south.
9. The church will be used on Sundays for the congregational meetings and two sessions of small-group instruction for two congregations. The Washington, D.C. Third Ward will use the church from 9:00 a.m. until 12:00, while the Mount Pleasant Branch will meet from 1:00 p.m. until 4:00 p.m. The two congregations currently have approximately 160 and 75 members, respectively, in attendance on Sundays. The Applicant indicated that a congregation generally can have a maximum of about 260 members, and that the church would not be used by more than two congregations.
10. The church facility will be used by smaller groups periodically during the week. Little daytime use is expected other than on Sundays, and evening use will be limited to meetings of youth groups once or twice per week, with attendance not likely to exceed 30

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people. Meetings of a women's ministry, with attendance of 20 to 70, will be held quarterly and on a few other occasions. Evening events are expected to begin at 7:00 or 7:30 and to conclude by 9:00 p.m. Regularly scheduled activities will occur on Tuesday, Wednesday, and Thursday evenings, and will generally attract a maximum of 70 to 80 people. Some special events will be held on occasional Friday evenings or Saturdays, but, consistent with church doctrine, no events are scheduled on Monday evenings. Generally, the evening events will be attended by members of the church, although some activities, such as a youth tutoring program, will be open to non-members as well.

11. All worship services and cultural and educational activities will take place inside the building.
12. The site will provide 72 parking spaces, 24 in a below-grade garage under the church building, 22 in a lot between the building and Piney Branch Road, and 26 in another lot in the northern portion of the site abutting Farragut Street. The Applicant anticipates that 70 vehicles will travel to the site on Sundays, and five on weekdays. The Board credits the Applicant's testimony that the 72 parking spaces provided at the subject property will be sufficient to meet the maximum attendance rate demand (250 people) at the church.
13. Vehicular access to the site will be provided on Piney Branch Road, where a curb cut will be made 64 feet to the north of Emerson Street. Piney Branch Road was selected to provide access to the parking area because of significant changes in grade along 16th Street and Emerson Street, and because use of the narrow alley off Farragut Street could cause adverse impacts on abutting properties.
14. The proposed driveway and surface parking areas will be located between the church building and a street right of way. The Applicant will provide landscaping for the site, as well as installing a 42-inch-high brick or masonry wall around the parking area. The height of the perimeter wall and a slight increase in the grade of the driveway will allow drivers exiting the parking lot a sight line clearance of approximately 240 feet to the north and 280 feet to the south.
15. The parking area will be illuminated with 42-inch high bollards and, along the perimeter of the lot, with four-foot high hooded lights on the parking lot side of the surrounding wall. No light will be shed beyond the property line.
16. The Board credits the testimony of the Applicant's traffic consultant that all intersections in the immediate vicinity of the subject property will continue to operate at acceptable levels of service after the church is established, because the additional vehicle trips generated by the church will not have a large impact on the intersections compared to background traffic levels in the surrounding area. The Applicant estimated that peak hour traffic counts were 62 to 101 percent higher during the weekday morning and evening rush hours than during the Sunday church peak hour (i.e. between 12 noon and

1:00 p.m., when one congregation will be leaving and the other will be arriving at the subject property).

Harmony with the Zone Plan

17. The R-1 district is “designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes.” 11 DCMR § 200.1. The provisions of the R-1 Residence district use regulations “are intended to stabilize the residential areas and to promote a suitable environment for family life. For that reason, only a few additional and compatible uses shall be permitted.” 11 DCMR § 200.2. Churches and other places of worship are generally permitted as a matter of right in the R-1 zone, but, like all other proposed non-residential uses, require special exception approval on properties located within the Sixteenth Street Heights overlay district. 11 DCMR §§ 201.1(b), 1553.2.
18. A church building in the R-1-B zone may be constructed to a maximum height of 60 feet or three stories, with maximum lot occupancy of 60 percent and minimum rear yard of 25 feet, where the lot must have an area of at least 5,000 square feet and a width of at least 50 feet. The Applicant’s proposed church building will comply with zoning requirements with respect to lot area and width, building height, lot occupancy, and rear yard. *See* 11 DCMR §§ 400.1, 400.6, 401.3, 403.2, and 404.1.
19. The Sixteenth Street Heights overlay district was “established to help accomplish several goals and policies of the Comprehensive Plan, especially those land use objectives relating to housing supply, neighborhood quality and character, and policies relating to human services and private institutions, as applied to the 16th Street Heights neighborhood.” 11 DCMR § 1551.1. The purposes of the overlay are to:
 - (a) promote the conservation, enhancement, and stability of this low-density, single-family neighborhood for housing and neighborhood-related uses;
 - (b) control the expansion of nonresidential uses, and/or further conversion of residential housing to nonresidential uses in order to maintain the housing supply and minimize the external negative impacts of new nonresidential uses that are permitted in the SSH/R-1-B District in order to preserve neighborhood quality; and
 - (c) allow neighborhoods to continue to provide a range of health and social service facilities as well as private institutions that provide cultural and religious enrichment and economic vitality, but within the framework of improved public review and control over the external effects of nonresidential uses. The objective is to make more compatible the Comprehensive Plan’s goals and policies for maintaining the quality and stability of residential neighborhoods with other policies related to the reasonable provision of human services throughout the District of Columbia.

11 DCMR § 1551.2

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under § 1553 to construct a new non-residential use consisting of a two-story church building, and an area variance from the off-street parking requirements under § 1553.2(b)(2) to locate parking spaces on the lot between the principal building and a street right-of-way, on a site located within the Sixteenth Street Heights overlay district and zoned SSH/R-1-B at 4901 16th Street, N.W. (Square 2710, Lot 15). The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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.

The Sixteenth Street Heights overlay district includes a provision that, in the case of a new nonresidential use, prohibits the location of parking spaces and driveways “on the lot between the principal building and a street right-of-way....”. 11 DCMR § 1553.2(b)(2). The Applicant proposes to construct a new church as the principal (and only) building on the lot and to locate parking in lots to the rear and side of the building as well as in a below-grade garage. Due to the unusual nature of the subject property, in particular its frontage on four streets, no surface parking or driveway could be provided anywhere on the lot except between the principal building and a street right of way.

The Board concludes that the subject property is affected by an exceptional situation or condition due to its unusual inverted-T shape and its frontage on four public streets. The Board further concludes that the applicant has demonstrated that strict compliance with the Zoning Regulations would result in practical difficulties; namely its inability to provide parking on the subject property, since any surface parking area and any driveway to that area would necessarily be located between the building and a right of way of one of the four streets abutting the subject property.

The requested variance can be granted without causing substantial detriment to the public good and without impairing the intent, purpose, and integrity of the zone plan. Other provisions of the Sixteenth Street Heights overlay district, as well as chapter 21 of the Zoning Regulations, establish the minimum parking requirement for the Applicant’s proposed new nonresidential use. A variance from § 1553.2(b)(2), which would otherwise preclude the provision of parking on the site, is justified because the degree of relief is relatively small and is warranted under the exceptional circumstances of a property with street frontage on all sides. The Board notes that, in response to a concern by DDOT, the Applicant verified that the driveway entrance to the

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subject property will be located at least 64 feet from the closest intersection, consistent with DDOT policy to require a distance of at least 60 feet. With DDOT's concurrence, the Applicant opted not to use a narrow alley to provide access to its parking areas in light of potential adverse impacts that would result to neighboring properties.

The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) to grant a special exception, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception 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 Map, subject to specific conditions. *See* 11 DCMR § 3104.1. Pursuant to § 1553.2, a new nonresidential use may be permitted by special exception in the Sixteenth Street Heights overlay district subject to certain requirements, including that the use must be capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions, and that the site must provide adequate, appropriately located and screened off-street parking sufficient for the needs of the maximum number of persons who can use the facility at one time. Based on the findings of fact, the Board concludes that the requested special exception can be granted consistent with the requirements of § 1553.2.

The Board credits the Applicant's testimony, including two reports from its traffic consultants, in concluding that the new church will be capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions. Consistent with church requirements, the building will be used by a limited number of people – a maximum of two congregations whose size is constrained by church rules to approximately 260 people – in addition to a limited schedule of activities held on weekday evening hours or less frequently. The Applicant provided adequate information regarding the programs and activities anticipated at the church, which are unlikely to create objectionable conditions due to noise because the activities will occur principally one day per week in addition to a few evenings during the week, primarily limited to members of the Applicant's congregation, and will take place indoors. As noted by the Applicant's architect, the church building, including its steeple, was designed to meet the needs of the Applicant. The Board concludes that the building will not create objectionable conditions related to its design, given the size of the two-story building and its distance from nearby residences.

The Board also concludes that the new church will be capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic. The subject property is located on a major arterial as well as three smaller streets, and is served by public transportation. While some portion of the church's membership is likely to arrive on foot, by bicycle, or by public transportation, the site is located in an area that can accommodate the additional vehicle trips that will be generated by the Applicant's church.

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Consistent with the requirements of the Sixteenth Street Heights overlay district, the church will provide adequate, appropriately located and screened off-street parking sufficient to provide for the needs of the maximum number of persons who can use the facility at one time. Pursuant to chapter 21 of the Zoning Regulations, the Applicant is required to provide at least 28 parking spaces at the subject property, since the main sanctuary of the church will have a maximum seating capacity of 279 seats. *See* 11 DCMR § 2101.1. Based on the findings of fact, the Board concludes that the 72 spaces that will be provided in surface lots and a below-grade garage will satisfy the demand for parking that will be generated by persons using the Applicant's facility, and that the spaces will be adequately screened from contiguous residential property by a brick wall, as well as landscaping on the site. The lighting used to illuminate the open parking spaces will be arranged so that all direct rays of lighting will be confined to the surface of the paved area, and the lighting will be the minimum necessary for reasonable visibility by drivers and for security purposes.

Based on the findings of fact and for the reasons discussed above, the Board concludes that the requested special exception 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. The church will comply with area requirements applicable in the R-1-B zone, and will be consistent with the purposes of the Sixteenth Street Heights overlay district to preserve neighborhood quality by minimizing external negative impacts of a new nonresidential use, and to allow the neighborhood to continue to provide a facility for religious enrichment within the framework of improved public review and control over the external effects of nonresidential uses, consistent with the Comprehensive Plan's goals and policies for maintaining the quality and stability of residential neighborhoods with other policies related to the reasonable provision of human services throughout the District of Columbia.

The Board fully credits the unique vantage point that ANC 4C holds with respect to the impact of the requested zoning relief on the ANC's constituents. However, because the ANC did not state any specific issues or concerns about the application in its written report, there is nothing that the Board can give "great weight" to.

The Board notes that ANC 4C did testify at the hearing concerning allegedly reduced safety on Piney Branch on Sundays due to the proposed project; safety to children on Piney Branch due to the additional traffic in the neighborhood on Sundays, the perception that the proposed church building towers over neighboring residences; and that the previous institutional use (a convent) "felt" residential because the convent was "small and had only two nuns residing there". However, the Board notes that the evidence in the record supports our conclusion that the proposed project will not affect adversely the use of neighboring properties, and can be granted without substantial detriment to the public good.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning, the Board concludes that the Applicant has satisfied the requirements for a special exception under § 1553 to construct a church, a new nonresidential use, in the Sixteenth Street Heights overlay district and an area variance from the off-street parking requirements

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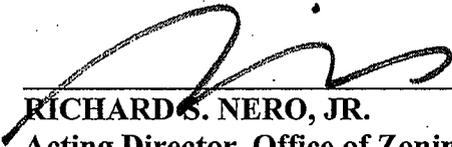
under § 1553.2 in the SSH/R-1-B district at premises 4901 16th Street, N.W. (Square 2710, Lot 15). Accordingly, it is hereby **ORDERED** that the application (pursuant to Exhibit No. 10, Plans) be **GRANTED**.

VOTE: 3-0-2 (Marc D. Loud, Shane L. Dettman, and Gregory N. Jeffries voting to approve; no other Board members participating)

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

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

ATTESTED BY:


RICHARD S. NERO, JR.
Acting Director, Office of Zoning

FINAL DATE OF ORDER: AUG 28 2009

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

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL

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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.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on AUG 28 2009, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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