GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Order No. 17395-B of Jemal's Citadel, LLC, Motion for Modification of Condition No. 15 to Order No. 17395 and Waiver of Time Limits for Filing, pursuant to section 3129 of the Zoning Regulations. The original application was pursuant to 11 DCMR § 3103.2, for a variance from the rear yard requirements under section 774, a variance from the nonconforming structure requirements under subsection 2001.1, a variance from the requirement to provide a loading berth that is 55 feet deep under subsections 2201.1 and 2201.6, to allow the establishment of a mixed-use project including a grocery store and general offices in an RC/C-2-B zone district at premises 1631 Kalorama Road, N.W. (Square 2572, Lot 36).

ORIGINAL APPLICATION HEARING DATE:	**November 29, 2005**
ORIGINAL APPLICATION DECISION DATE:	**January 10, 2006**
FINAL ORDER DATE:	**June 12, 2006**
RECONSIDERTION DECISION DATE:	**July 11, 2006**
FINAL ORDER DATE ON RECONSIDERATION:	**December 14, 2006**
MODIFICATION DECISION DATE:	**February 8, 2011**

SUMMARY ORDER ON MODIFICATION

Background

On January 10, 2006, the Board of Zoning Adjustment ("Board" or "BZA") granted the application of Jemal's Citadel LLC ("Applicant") for area variances from the rear yard requirements under § 774, the nonconforming structure requirements of § 2001.1, the loading requirements under §§ 2201.1 and 2201.6, to allow the redevelopment of an existing building in a mixed-use project that would include a grocery store, retail or service uses, and general offices in the Reed-Cooke/C-2-B District at 1631 Kalorama Road, N.W. (Square 2572, Lot 36). (Exhibit 100.)

On July 11, 2006, the Board denied a Motion for Reconsideration of the final order filed by the Reed Cooke Neighborhood Association. (Exhibit 104.)

The Applicant completed the renovations pursuant to the approval order and Harris-Teeter grocery store has successfully operated in the building since April 23, 2008. The office and retail spaces, however, have remained vacant as a result of the collapsed economy.

Waiver of the Two-Year Time Limit

On January 10, 2011, the Applicant filed with the Board a request for a minor modification of Condition No. 15 in BZA Order No. 17395. (Exhibit 107.) BZA Order No. 17395 became effective on June 15, 2006, and BZA Order No. 17395-A became effective on December 14, 2006. Because this modification request was filed more than two years after the most recent effective date, the Applicant requested a waiver from 11 DCMR § 3129.3.

The Board accepted the Applicant's stated reasons for the delay. The Applicant completed the project in compliance with the approved plans. However, because of the continuing weak economy, the office space has remained vacant for the past several years. The Applicant could not have known within the original two-year timeframe that the office space could not be leased. Waiver of the two-year provision would allow the Applicant to market the space for residential use without compromising the purpose and intent of the original BZA order. By consensus, the Board waived the two-year requirement for the Applicant to file a modification request.

The Modification

The proposed minor modification will allow the Applicant to convert the existing first floor space from office use to residential use and to construct new residential loft space in the project. The grocery store and retail space would remain unchanged.

The residential portion of the building would contain 33,470 square feet of gross floor area, or a density of 0.79 floor area ratio ("FAR"). The overall density of the building would be approximately 1.96 FAR, of which 1.17 would be devoted to commercial uses. The proposed density falls below the maxim 3.5 FAR permitted in the RC/C-2-B District, of which no more than 1.5 FAR can be devoted to commercial uses.

Normally, the Applicant would not need to seek approval from the BZA to establish the proposed residential use because residential uses are permitted as a matter of right in the RC/C-2-B District. However, the plans approved in the original application identified a portion of the upper (first) floor as "unoccupiable" and Condition No. 15 of BZA Order No. 17395 specifically prevents the Applicant from converting the portion of the first floor labeled "unoccupiable" to *any* useable space. The record reflects that the intent of this condition was to prevent the remainder of the floor space above the Harris Teeter grocery store (identified as the first floor on the drawings) from being converted to office use and thereby exceeding the permitted 1.5 FAR for nonresidential uses in the C-2-B District. The actual language of Condition No. 15 was much broader, however, in that the Applicant is precluded from converting that area to *any* useable space, including residential uses for which no BZA relief would have been required if it had been proposed initially. The Applicant stated that the proposed conversion of the space to residential use will otherwise comply with the Zoning Regulations with respect to parking, loading, lot occupancy and FAR. (Exhibit 107.)

The Office of Planning ("OP") submitted a report in support of the request for minor modification and endorsed the conversion of the space to residential use. OP noted that in its original report dated November 22, 2005, OP expressed concerns that the residual area within the dome could be easily converted to office space and thereby increase the commercial FAR without a permit. OP therefore recommended and the BZA approved a condition to preclude the use of this space. At the time, OP did not raise concerns about using the space for residential purposes. With respect to the Applicant's current request to modify Condition No. 15, OP noted that no changes would be made to the approved variances for height, lot occupancy, rear yard and loading, and therefore recommended approval. (Exhibit 108.)

The site of this application is located within the jurisdiction of Advisory Neighborhood Commission ("ANC") 1C. A copy of the minor modification application was served on ANC 1C on January 10, 2011. ANC 1C did not participate in this application. A copy of the application was also served that day on the Reed Cooke Neighborhood Association, which was a party in the initial application. The Reed Cooke Neighborhood Association likewise did not participate in this current application. Accordingly, a decision by the Board to grant this minor modification application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof for minor modification of approval set forth in 11 DCMR § 3129. The Board finds that the minor modification application does not change the material facts upon which the Board based its original approval of the application.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DMCR § 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED, pursuant to the plans in Exhibit 107, Exhibit C, and CONDITION NO. 15 is hereby amended, as follows:**

> 15. The area under the dome identified as "unoccupiable" may only be converted to residential space.

VOTE on Original Application (June 12, 2006): 5-0-0

(Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and Gregory Jeffries (by absentee vote) to GRANT the application subject to conditions.)

VOTE on Motion for Reconsideration (December 14, 2006): 5-0-0

(Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., Gregory Jeffries and John A. Mann II (by absentee vote) to DENY the motion.)

VOTE on Minor Modification (February 8, 2011): **3-0-2**

(Meredith H. Moldenhauer, Nicole C. Sorg and Jeffrey L. Hinkle to GRANT the minor modification; no other members present or voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved issuance of this order.

ATTESTED BY: _____
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: FEB 18 2011

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

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

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

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

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 17395-B

As Director of the Office of Zoning, I hereby certify and attest that on February 18, 2011, 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:

Mary Carolyn Brown, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006

Reed Cooke Neighborhood Association
c/o Maureen Gallagher
1656 Kalorama Road, N.W.
Washington, D.C. 20009

Reed Cooke Neighborhood Association
c/o Simi Batra
1710 Euclid Street, N.W.
Washington, D.C. 20009

Chairperson
Advisory Neighborhood Commission 1C
P.O. Box 21009
Washington, D.C. 20009

Single Member District Commissioner 1C07
Advisory Neighborhood Commission 1C
2370 Champlain Street, N.W.
Washington, DC 20009

Jim Graham, Councilmember
Ward 1
1350 Pennsylvania Avenue, N.W., Suite 105
Washington, D.C. 20004

Melinda Bolling, Esq.
Acting General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W., 5th Floor
Washington, D.C. 20024

ATTESTED BY:

JAMISON L. WEINBAUM
Director, Office of Zoning