GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16586 of Charles E. Smith Companies, pursuant to 11 DCMR 3104.1, for a special exception under Section 214 for the construction of an underground parking garage to be used by the (Alban Towers), or in the alternative, pursuant to 11 DCMR 3103.2 for a use variance from Subsection 300.3 to use a portion of the underground garage for non-required accessory parking for the adjacent apartment building in an R-2 District at premises 3700 Massachusetts Avenue, N.W. (Square 1929, Lots 13, 14, 803, 804 and 805).

HEARING DATE: July 5, 2000
DECISION DATE: July 5, 2000 (Bench Decision)

SUMMARY ORDER

The zoning relief requested in this case is self-certified, pursuant to 11 DCMR 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, by mail to Advisory Neighborhood Commission (ANC) 3C and to owners of property within 200 feet of the site.

The site of this application is located within the jurisdiction of ANC 3C. ANC 3C, which is automatically a party to this application, submitted a written statement in support of the application.

The Board determined that the relief being requested would be applicable pursuant to 11 DCMR 3104.1, for a special exception under Section 214, Subsections 2000.4 and 2000.6.

As directed by 11 DCMR 3119.2, the Board required the applicant to satisfy the burden of proving the elements, which are necessary to establish the case for a special exception pursuant to 11 DCMR 3104.1. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3104.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore **ORDERED** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

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Board of Zoning Adjustment
District of Columbia
CASE NO.16586
EXHIBIT NO.43

For the purpose of these conditions, the term "Neighbors" includes any resident within two blocks of the site and any other person in the general vicinity who notifies the Applicant or ANC Commissioner Lyle Blanchard, or his successor, Lars Hydle, that that person wishes to be included in the group "Neighbors."

1. In accordance with the ANC Resolution dated June 19, 2000, and paragraph 8(g) of the Neighbor Agreement dated July 5, 2000, the Applicant shall implement the "Cooper Code: Safety Standards for Construction Vehicles" as follows:

    a. Before a trucking company starts a project, the excavation company must require documentation of:
        i. All necessary licenses and permits;
        ii. Any accidents or citations involving trucks or on-duty drivers for the prior year;
        iii. The last required federal inspection;
        iv. Adequate liability insurances;
        v. Current federal safety report; and
        vi. A pledge not to pay speeding tickets for drivers.

    b. If any of the above information changes or expires during the project, the trucking company must update its records;

    c. Before work starts, the excavation company shall certify in writing that the trucking company has complied with the requirements specified in paragraph 1 (a) above. The certification shall be placed on the truck's windshield, with a list of each driver authorized to drive the truck;

    d. Before any driver starts work on a project, the excavation company shall inspect the driver's commercial license to make sure it is current and appropriate for the job; The excavation company shall reject services from those drivers whose licenses are neither current nor appropriate.

    e. The excavation company shall identify routes for drivers that minimize the use of streets through residential areas;

    f. The excavation company may not require or recommend that drivers take any routes other than those identified in accordance with paragraph 1 (e) above;

    g. If the excavation company uses the duration of a trip to measure a trucker's performance, the standard shall be the "reasonable" time it takes to drive the recommended route; and

    h. The excavation company may not load any truck with more weight than the maximum allowed in any jurisdiction in which the truck is driven.

2. In accordance with the ANC Resolution dated June 19, 2000, and paragraph 8 of the Neighbor Agreement dated July 5, 2000, the Applicant shall require all contractors to implement "Other Construction Mitigation Measures" during construction on the Rear Site (Lots 7-11 and 13 in Square 1929) and rehabilitation of the Alban Towers Apartment Building as follows:

    a. Contractors shall work closely with the Neighbors to minimize disturbances during construction to keep to a minimum noise, traffic, vibrations, air pollution, and other adverse effects from construction;

    b. Construction and construction-related activities may not start before 7:00 a.m. nor continue after 5:00 p.m.;

    c. Major machinery, such as backhoes and front-end loaders, may not start before 7:30 a.m. To the extent possible, the Applicant shall abate noise until 8:00 a.m. and provide one quiet period each day from 11:00 a.m. to 3:00 p.m. of 30 minutes duration. In addition, the Applicant shall use its best efforts to employ a "noise monitor" to ensure that diesel engines on trucks do not create an excessive level of noise while idling or during startup;

    d. Trash may not be collected before 7:00 a.m. or after 7:00 p.m.;

    e. No pile driving is expected, but should unforeseen circumstances warrant pile driving, the Applicant shall notify the Neighbors at least 24 hours in advance and provide them with a basis for the pile driving;

    f. Weekend exterior construction activity, if any, shall be confined to a period of 9:00 a.m. to 5:00 p.m. on Saturdays only;

    g. Contractors shall comply with the Cooper Code as set forth above in paragraph (1), a plan governing truck traffic developed by Advisory Neighborhood Commission 3G;

    h. Contractors shall maintain a program of dust control along 38th and Garfield Streets, periodic watering of soil, daily cleaning of 38th and Garfield Streets, and daily washing of truck tires and undercarriages;

    i. Construction workers shall be required to park on-site, in parking facilities designated by the Applicant, or on public on-street spaces not covered by the District of Columbia residential parking permit program;

    j. During construction, the Applicant, shall avoid using 38th Street to the extent possible;

    k. The Applicant shall promptly upon receipt provide the Neighbors with copies of all building permits;

l. The Applicant shall provide the Neighbors with email alerts or extra-net communications regarding any instances when construction is likely to produce considerably more noise than usual for construction or increased noise levels for an unusually long period;

m. The Applicant shall provide the Neighbors with information regarding the ventilation system utilized for the parking garage on the Rear Site, the air conditioning for the residential structures on the Rear Site, and the rooftop air conditioning for Alban Towers and assure the Neighbors that such systems will not produce any greater noise than provided in the specifications in the Applicant's plans or as required by applicable regulations of the District of Columbia;

n. The Applicant shall provide quarterly status reports or newsletters to the Neighbors on the construction on the Property and the condition of the roads beginning on the effective date of this order; and

o. The Applicant shall notify ANC 3C in advance of the routes to be used by trucks involved in the construction and shall ensure to the extent possible that they only use major arterials to travel through the District of Columbia.

3. In accordance with the ANC Resolution dated June 19, 2000, and paragraphs 3 through 5 of the Neighbor Agreement dated July 5, 2000, the Applicant shall implement the "Landscape Development Plan and Maintenance Plan" as follows:

   a. The Applicant shall implement a Landscaping Plan for the Rear Site. The Landscaping Plan sets forth the planting to be undertaken by the Applicant on the Rear Site, a triangle park in front of Alban Towers, and any other portions of the Square, all of which shall be maintained by the Applicant in perpetuity. The triangle park in front of Alban Towers shall be maintained by the Applicant to the extent permitted by the District Government;

   b. The Applicant shall establish a landscaped buffer area on both sides of 38th Street between the improved portions of Alban Towers and the Rear Site and the neighborhood houses and perform the landscaping work as depicted in its plans; and

   c. The Applicant shall undertake to stabilize and maintain open areas not built on, including the planting of grass and the planting of trees and shrubs, except as provided herein with regard to the use of the Rear Site Landscaping Plan. Moreover, the Applicant shall preserve as many trees and shrubs as possible and as long as possible consistent with reasonable needs of construction.

4. In accordance with the ANC Resolution dated June 19, 2000, the Applicant shall restrict the use of the parking garage only to the residents of the apartment building and their

guests, the owners of the semi-detached houses on Square 1929 and their guests, and the employees working at the apartment building. Parking spaces shall not be leased or subleased to persons who do not reside in Square 1929. Tenants shall be encouraged to use the garage whenever possible and avoid parking on the surrounding streets.

5. The Applicant shall use the services of American Pest Control, or a similar entity, for the purpose of installing bait stations throughout the neighborhood as a rat control program.

6. The Applicant shall comply with the storm drainage and storm water management plan submitted with BZA Application 16586, both during and after construction on the properties in the area and take all necessary and appropriate remedial measures to assure storm runoff does not damage Neighbor's homes or grounds.

7. The Applicant and the Neighbors shall create, within 60 days of the date of this BZA order, an on-going Community Liaison Committee. The Liaison Committee shall be composed of two representatives of Smith Property Holdings Alban Towers, L.L.C., and two representatives selected by the Neighbors, provided that the representatives of the Neighbors (other than consultants) must live in the neighborhood. The Applicant shall perform structural monitoring of neighborhood housing on the 2900 block of 38th Street and the 3700 block of Garfield Street, N.W. during construction and shall provide for the photographing or recording via survey all interior and exterior conditions and buildings where access is granted by the owner, to ascertain conditions prevailing before construction begins, the preparation of structures and support members for adjacent drilling, and the establishment of a monitoring program, including any required seismic or crack-detection monitoring.

8. The Applicant shall promptly repair, at its sole cost and expense, any damage to the Neighbors' property or improvements caused by the excavation and construction. This condition is limited to signatories of the July 5, 2000 Neighbor Agreement.

9. The Applicant shall comply with all applicable District of Columbia codes and regulations with respect to construction activities, protection of adjoining properties, and repair of any damage caused by the Applicant to adjoining property or public space.

10. The Applicant shall perform the following to improve the traffic situation in the area:

    a. consider seeking the establishment or modification of parking zones favoring the residents of the neighborhood;

    b. confer with Neighbors on the design of the bus shelter proposed for Wisconsin Avenue; and

    c. seek a new southbound bus stop at the intersection of Wisconsin Avenue and Garfield Street.

11. The Applicant shall consider making a joint appeal to the utility companies and the District of Columbia to upgrade and bury the utilities on 2900 block of 38th Street and then resurface the whole block.

12. To facilitate the resolution of complaints from the Neighbors pertaining to the terms of this order or other matters, the Applicant shall maintain the following procedures:

    a. The Applicant's representative to the Liaison Committee may be notified by calling the principal, whose current number is 202-364-1825. If this number is changed, the Applicant shall immediately notify each member of the Liaison Committee of the new telephone number.

    b. The Applicant shall use reasonable or best efforts to resolve the issue as promptly as possible.

    c. If an issue is not resolved, the person or party raising the issue or the Applicant shall notify the Liaison Committee. The Liaison Committee shall attempt to resolve the problem within 30 days to the satisfaction of the Liaison Committee. During this process, the Applicant and Neighbors shall be committed to working in good faith toward resolution of the problem. To the extent an issue arises that is not subject to the arbitration remedy, referenced in the paragraph 17 of the Neighbor Agreement dated July 5, 2000, and that remains unresolved by the Liaison Committee after 30 days, the parties shall agree to submit the dispute to mediation under such terms and conditions as are developed by the Liaison Committee.

    d. Regardless of whether any disputes arise between the Neighbors and Applicant, the Applicant shall hold at least one community meeting a year with the Neighbors at a time selected by the Liaison Committee to discuss and resolve any issues which arise from the use or operation of the Alban Towers Apartment Building and the improvements on the Rear Site (Lots 7-11 and 13 in Square 1929).

Pursuant to 11 DCMR 3101.6, the Board has determined to waive the requirement of 11 DCMR 3125.3 that findings of fact and conclusions of law accompany the order of the Board. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 5-0 (Sheila Cross Reid, Rodney Moulden, Robert Sockwell, Anne Renshaw and Anthony Hood to approve).

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

ATTESTED BY: Jerrily Kress
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: JAN 17 2001

PURSUANT TO D.C. CODE SEC. § 1-2531 (1999), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

SO # 16586/poh

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO: 16586

As Director of the Office of Zoning, I certify and attest that on JAN 17 2001, a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Richard B. Nettler, Esquire
1801 K Street, N.W., Suite 1200
Washington, D.C.20006

Ruthanne Miller, Chairperson
Advisory Neighborhood Commission 3C
Woodley Park Towers
2737 Devonshire Place, N.W.
Washington, D.C. 20008

Lyle Blanchard, Commissioner
Single Member District 3C07
3124 38th Street, # 2
Washington, D.C. 20016

Michael D. Johnson, Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE, Suite 2000
Washington, D.C. 20002

Lars Hydle, Commissioner
Single Member District 3C07
2918 38th Street, N.W.
Washington, D.C. 20016

Attested by: Jerrily R. Kress
JERRILY R. KRESS, FAIA
Director

Attest. No 16586/poh