GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16618 of The Phillips Collection, as amended, pursuant to 11 DCMR § 3104.1 for a special exception to allow two principal structures on a single lot pursuant to the provisions of subsection 2516.1, and pursuant to 11 DCMR § 3103.2 for variances from the floor area ratio limitations of subsection 402.4, and the provisions of subsection 2001.3(a) – (c) to allow an enlargement of and/or additions to a nonconforming structure devoted to a conforming use in the D/DC/R-5-B and DC/SP-1 Districts at premises 1600-21st Street, N.W. (Square 66, Lots 74 and 819) and 1618-21st Street, N.W. (Square 66, Lot 827).[1]

HEARING DATES: **December 5, 2000 and June 26, 2001**
DECISION DATE: **June 26, 2001**

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was 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 and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 2B and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning for review and report.

The subject property is located within the jurisdiction of ANC 2B. ANC 2B, which is automatically a party to the application, participated in this case.

As directed by 11 DCMR § 3119.2, the Board required The Phillips Collection (hereinafter referred to as "Phillips" or "Applicant") to satisfy the burden of proving the elements necessary to establish the case for a special exception pursuant to 11 DCMR §§ 3104.1 and 2516.1, and for variances from the strict application of the requirements of 11 DCMR §§ 3103.2, 402.4 and 2001.3(a) - (c).

All persons and entities originally accepted as parties in opposition to the application have entered into agreements with the Applicant and have withdrawn their opposition and indicated

BZA Case No. Exhibit No. 174

[1] **The Applicant, the parties, and residents of the Dupont Circle neighborhood were engaged in formal mediation to resolve the issues of the case. As a result of their discussions, the project was revised to incorporate the changes, which resulted from the mediation sessions. The project's amended plans and revised zoning computation sheet are located in Exhibit No. 166 of the record.**

Board of Zoning Adjustment
District of Columbia
CASE NO.16618
EXHIBIT NO.174

their support for the application as modified pursuant to those agreements. The Phillips, ANC 2B, the Cosmos Club and other neighbors have agreed to the expansion of the museum, as modified, provided that it will be constructed and operated in accordance with the conditions that follow, which the Board accepts as fair and reasonable. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, particularly including the Neighborhood Cooperation Agreement (Exhibit 165), and having given great weight to the position of ANC 2B and to the position of the Office of Planning in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR § 3104.1, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board also concludes that the Applicant has met its burden of proof pursuant to 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property which creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested 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.

Pursuant to 11 DCMR § 3101.6, the Board waived the requirement of 11 DCMR § 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

It is therefore **ORDERED** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Phillips shall build the project as approved herein substantially in accordance with the architectural plans dated June 6, 2001 and identified as Exhibit 166 of the record in this case. Phillips may make such adjustments as may be necessary to complete the permit review process, provided that such modifications do not increase the height or projection of the new construction above grade to the west and below grade to the south, beyond the existing south wall of the Goh Annex.

2. The obligations set forth in these conditions are solely those of Phillips. References to other persons or entities are for identification or descriptive purposes.

3. Phillips shall identify the location, configuration and dimensions of the public alley easement on any site plan drawing submitted with the building permit application for the project with the following notation: "This area subject to Public Alley Easement recorded in the Land Records of the District of Columbia on December 31, 1987 as Instrument No. 73431, as amended."

4. No architectural elements, whether for decorative or functional purposes, shall be added to the plans which would impede the ability of trucks to fully utilize the service bays shown on the plans when parked in those bays for loading or unloading purposes.

5. The auditorium shall be rated to and have a capacity of not in excess of 180 persons. The use of the auditorium shall be restricted to Phillips-hosted art related events, authorized membership events, or use by Phillips staff. No outside party shall make any use of the auditorium, except that the Phillips may allow neighborhood organizations to use the auditorium for meetings.

6. The number of parties, dinners, receptions or other events at the museum occurring after 6:00 p.m. shall be limited as follows:

   (a) (1) There shall be no more than 65 events per year;

   (2) Of the 65 events, no more than 36 shall be over 100 guests;

   (3) Of the number of events with more than 100 guests, no more than 6 events shall involve more than 300 guests; and

   (4) No events shall involve more than 500 guests.

   (b) The annual Duncan Phillips Dinner is not included in the foregoing limitations.

   (c) The Phillips shall allow neighborhood organizations to hold meetings of any size at any time.

   (d) The Sunday afternoon concerts and the Thursday night museum program are not included in the foregoing limitations.

7. The number of parties, dinners, receptions or other events at the museum ending prior to 6:00 p.m. shall be limited as follows:

   (a) There shall be no limitation on the number of events involving 50 or fewer guests;

   (b) There shall be no more than 24 events for more than 50 guests; and

   (c) Of the events involving more than 50 guests, no more than 4 events shall involve more than 100 guests.

8. Events and other activities at The Phillips Collection shall be subject to the following conditions:

(a) Except for the annual Duncan Phillips Dinner, evening events shall end by 10:00 p.m. and guests cleared by 10:30 p.m. and there will be no pickup of equipment or supplies after 11:00 p.m.;

(b) Thursday evening viewing hours shall not be extended from their current termination of 8:30 p.m.;

(c) The Sunday afternoon concerts shall not be extended from their current termination of 7:00 p.m.;

(d) There shall be no simultaneous events; and

(e) The Phillips shall make good faith efforts to avoid holding large events at the same time as the Cosmos Club.

9. Delivery trucks and catering trucks accessing the museum shall not be parked on or queued up in the alley at any time. At no time shall ingress or egress to the garages serving 1622-4 and 1628 21st Street be blocked by reason of any actions within the control of the Phillips.

10. Following completion of the project as approved herein, deliveries to the Phillips shall be subject to the following conditions:

(a) Trucks accessing the museum shall not make deliveries from 21st Street, N.W.;

(b) Entry to the rear of the museum by catering or other delivery trucks accessing the designated loading berths shall be from Florida Avenue. Trucks shall exit the rear of the Phillips at Florida Avenue. Trucks shall enter or exit onto 21st Street only in cases of safety or to relieve congestion in the alley system in Square 66 (including the portion of the alley that is closed and is subject to a public alley easement) as determined by Phillips personnel. The Phillips shall erect and maintain appropriate signs at the entrance to the 21st Street portion of the alley, the Florida Avenue entrance to the alley, and at the rear of the museum;

(c) The Phillips shall store sufficient tables and chairs at the museum so that deliveries of such equipment will be minimized;

(d) On rare occasions when the Phillips may have no alternative to hindering the free flow of cars in or out of the Missionaries of Africa's garages, the Phillips

shall make arrangements acceptable to the Missionaries for the Missionaries to relocate temporarily as many as 5 automobiles;

(e) All loading and unloading of artworks, equipment and supplies shall be at the rear of the museum except for delivery of artworks by trucks larger than 24 feet. The Phillips shall use its best efforts to unload trucks larger than 24 feet at the rear of the museum. Deliveries which must be made on 21st Street shall not be made earlier than 7:30 a.m.;

(f) One loading dock shall be maintained at all times for truck loading and unloading. Additionally, 3 loading spaces shall be maintained for three hours before a catered event and for the morning following a catered event. At no time shall vehicles other than catering and delivery vehicles use spaces that will be needed at the time for delivery vehicles;

(g) Deliveries at the rear may not begin prior to 7:30 a.m. and shall be completed by 8:30 p.m., and may not occur during the hours of 11:30 a.m. to 1:30 p.m.;

(h) Trucks parked in the loading berths shall not extend into the alley. Loading and unloading activities shall not impede free vehicular circulation in the alley system in Square 66;

(i) Vehicles servicing the museum shall not park or idle on 21st Street, Hillyer Place, Q Street or adjoining alleys, except for armored car service to the museum;

(j) The portion of the alley from 21st Street to and including the rear of the museum shall be monitored by closed circuit camera; and

(k) Through contract or otherwise, the Phillips shall advise its vendors and other delivery personnel of the restrictions on alley and street usage, and shall take all necessary and appropriate action to enforce compliance.

11. The Phillips shall, and shall so direct its vendors to, restrict the number and size of vehicles using its loading area so that, when parked in the service bays, the vehicles shall be entirely within the boundaries of the service bays and not extend into the alley easement area. No more than three vehicles shall use the service bays at any one time. No loading or unloading shall occur in the staff parking area. Vehicles shall not park or stand in the public alley easement area waiting for other vehicles to complete loading or unloading activities. Loading and unloading activities shall not impede free vehicular circulation in the public alley easement area.

12. The Phillips shall maintain a contract with an established valet parking service. The contract shall show evidence that the parking contractor has secured agreements guaranteeing adequate off-street parking for Phillips events. Whenever possible, the Phillips will utilize parking space available on Cosmos Club property. The Phillips shall encourage, for all events, the use of public transportation and may operate shuttle service to and from a garage. In addition, the Phillips shall observe the following conditions:

    (a) There shall be no on-street valet parking (including valet employee cars) on 21st, R or Q Streets, Hillyer Place or other non-arterials;

    (b) Subject to subparagraph (e) below, valet drop off and pickup shall be in Hillyer Court at the rear of the Phillips when the Cosmos Club agrees to make parking available for use by the Phillips. Otherwise valet parking shall take place on Q Street. If Q Street is used, the valet parking operation shall not block the Massachusetts Avenue and Q Street vehicle entrances to the Cosmos Club. If neither location is available, valet parking shall occur on 21st Street. If the valet parking causes traffic or parking problems, the Phillips will implement solutions achieved pursuant to the mechanism set forth in the Neighborhood Cooperation Agreement;

    (c) Invitations to events at the Phillips shall encourage guests not to come by private automobile;

    (d) The Phillips shall endeavor to maintain an agreement with the Cosmos Club to use its parking spaces when not otherwise in use; and

    (e) The Phillips shall not allow valet parking, loading, unloading, standing or staging to occur in any part of the alley system in Square 66 except with prior consent of the Cosmos Club.

13. The Phillips staff shall monitor and resolve illegal parking in or vehicle blockage of the alley by vehicles accessing the Phillips.

14. Exit from the Education Center onto 21st Street shall be through the main entrances to the museum through the Goh Annex except for emergencies.

15. The Phillips shall not take any actions to cause or bring about the elimination of on-street parking.

16. The gift shops shall be constructed and operated as follows:

(a) There shall be no more than one gift shop, although the shop may be on two levels of the Education Center and/or the Goh Annex. A secondary temporary gift shop may be set up from time to time in connection with, and oriented to, special exhibitions;

(b) On 21st Street, access shall be only from the main entrances to the museum;

(b) The gift shop shall not be advertised separately from the museum in any medium except the Phillips' web site and in communications to members; and

(c) There shall be no signage for the gift shop outside the building, except that shop hours may be posted on the same sign that posts museum hours. The gift shop's regular hours shall not be outside the museum's regular hours.

17. The café shall be constructed and operated as follows:

(a) The café may seat no more than 55 persons at one time;

(b) The café may operate as a for-pay facility only during current museum operating hours (10:00 a.m. - 5:00 p.m., Tuesday, Wednesday, Friday and Saturday; 10 a.m. - 8:30 p.m., Thursday; and noon to 7:00 p.m., Sunday);

(c) Entrance to the café from 21st Street shall only be through the main entrances to the museum; and

(d) There shall be no signage for the café outside the building, except that hours of operation may be posted on the same sign that posts museum hours.

18. There shall be no outdoor music or amplified speech in the sculpture garden.

19. Following completion of the project as approved herein, trash shall be collected in the following manner:

(a) Trash shall not be collected before 7:30 a.m. or after 7:00 p.m. or during the hours of 11:30 a.m. to 1:30 p.m.;

(b) Trash shall be collected at the rear of the museum. The Phillips shall use best efforts to have trash trucks avoid using the portion of the alley that abuts 21st Street; and

(c) The Phillips shall use its best efforts to coordinate trash pickup with neighboring property owners to reduce the use of the alley by trash trucks.

20. The Phillips shall preserve as many trees along its 21st Street frontage as possible. Trees that are damaged and cannot be preserved shall be replaced in accordance with District Regulations after conclusion of construction.

21. During construction of the project as approved herein, the Phillips and its contractors shall abide by the following terms and conditions:

    (a) Contractors shall work closely with the neighbors and ANC 2B to minimize disturbances during construction to keep to a minimum noise, traffic, vibrations, air pollution and other adverse effects from construction;

    (b) Trash shall not be collected before 7:30 a.m. or after 8:00 p.m. or during the hours of 11:30 a.m. to 1:30 p.m.;

    (c) Should unforeseen circumstances warrant pile driving, the Phillips will notify neighbors at least two weeks in advance and explain the reason(s) for the pile driving;

    (d) Construction workers shall avoid parking on 21st Street, Massachusetts Avenue to R Street, Hillyer Place, Florida Avenue and R Street and are prohibited from parking within Square 66. The Phillips shall encourage use of Metro by such means as providing Metrocards to construction workers, facilitating use of carpools, or other centralized means of transporting workers to the site;

    (e) To the extent that it is not inconsistent with other provisions herein, Contractors shall comply with the "Cooper Code," a plan governing truck traffic developed by ANC 2E (attached as Exhibit 2 to Exhibit 165 of the record herein); and

    (f) Vehicular and pedestrian access to the garages of 1628 and 1624 21st Street through the alley shall at all times be open and unimpaired.

22. During construction, the Phillips shall keep the north-south segment of the public alley easement area open while the east-west segment is closed during excavation, and shall keep the east-west segment of the public alley easement area open while the north-south segment is closed during excavation.

23. During construction of the project as approved herein, contractors for the Phillips shall endeavor to meet the goals set forth below (as they may be modified pursuant to the Neighborhood Cooperation Agreement from time to time).

(a) Construction workers and equipment shall not arrive at the jobsite prior to 7:00 a.m. Construction-related activities shall not start before 7:30 a.m. nor continue after 6:00 p.m.;

(b) Major machinery, such as backhoes and front-end loaders, shall not start before 7:30 a.m. To the extent possible, the Phillips shall abate noise until 8:00 a.m. In any event, any construction activity that exceeds a decibel level of 55, as measured at the Phillips property line, shall not begin before 8:00 a.m.;

(c) Weekend exterior construction activity, if any, shall be confined to the hours between 9:00 a.m. to 6:00 p.m. on Saturdays;

(d) Contractors shall maintain a program of dust control, including periodic watering of soil and daily cleaning of the open portions of Hillyer Court;

(e) Contractors shall provide a "noise monitor" to ensure that diesel engines on trucks do not create an excessive level of noise while idling or during startup;

(f) No construction staging shall occur on or adjacent to 21st Street. The sidewalk on the west side of 21st Street shall remain open for pedestrian traffic and the street, including the parking lanes shall remain open except during times when steel is being delivered to the construction site; and

(g) Construction traffic shall conform to a plan to be developed between the contractor and the construction consultant selected pursuant to the Neighborhood Cooperation Agreement. The Phillips shall carry out the plan so as to minimize any negative impact on its neighbors.

24. Representatives of Phillips and The Cosmos Club shall meet on a regular basis to discuss issues, which may arise between them with the intention of seeking mutually agreeable resolution of those issues.

The Board voted to APPROVE the application, ON ITS MERITS, as presented at the June 26, 2001 Public Hearing.

VOTE: 5-0-0 (Carol J. Mitten, Sheila Cross Reid, Anne Mohnkern Renshaw, Susan Morgan Hinton and Geoffrey H. Griffis to approve.)

On JULY 31, 2001, the Board voted to APPROVE the CONDITIONS of the Order.

VOTE: 4-0-1 (Carol J. Mitten, Sheila Cross Reid, Anne Mohnkern Renshaw, and

Geoffrey H. Griffis to approve; David Levy not hearing the case, not voting.)

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

Each concurring member approved issuance of this Order.

JERRILY R. KRESS, FAIA
DIRECTOR

FINAL DATE OF ORDER: AUG 15 2001

PURSUANT TO 11 DCMR §3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR §3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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 PURPOSE OF SECURING A BUILDING PERMIT.

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, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE §1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

BAB/8.10.01

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 16618

As Director of the Office of Zoning, I hereby certify and attest that on AUG 15 2001, a copy of the foregoing Order was mailed first class, postage prepaid, or delivered via inter-office 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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ATTESTED BY: _____
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