GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

**Application No. 16688 of Michael R. Kain, et al**, pursuant to 11 DCMR § 3104.1 for a special exception from the rear yard set-back requirements pursuant to subsections 774.2 and 774.9(a) to allow an accessory building abutting an alley to be connected to the principal building in the DC/C-3-B District at premises 1619 Connecticut Avenue, N.W. (Square 111, Lot 815).

**HEARING DATE:** **May 8, 2001**
**DECISION DATE:** **May 8, 2001 (Bench Decision)**

## SUMMARY ORDER

### SELF-CERTIFIED APPLICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2 (Exhibit 14).

The Board provided proper and timely notice of 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 subject property is located within the jurisdiction of ANC 2B. ANC 2B, which is automatically a party to this application, submitted a written statement expressing its opposition to the application (Exhibit 28). At the public hearing, the ANC representative indicated that the commission and the applicant signed a Voluntary Agreement, which addresses the issues of noise, trash, and early morning construction (Exhibit 34). Based on the signed agreement, the ANC withdraw its objection to the application. The agreement states the following:

1. "It is the applicant's understanding that Chevy, Inc., t/a Wrapworks (Wrapworks), which is located at 1601 Connecticut Avenue, N.W. (Square 111, Lot 82) (hereinafter referred to as "1601 Connecticut"), has reached an agreement with ANC 2B regarding ANC 2B's noise concerns at 1601 Connecticut, which property is owned by the applicant. Attached hereto as Exhibit A is a copy of the agreement between ANC 2B and Wrapworks. In an effort to facilitate Wrapworks' compliance with the agreement between ANC 2B and Wrapworks, the applicant has suggested to Wrapworks that Wrapworks (at its own expense)

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move the HVAC unit at 1601 Connecticut, which unit is the subject of ANC 2B's noise concerns, to the parking garage located at 1601 Connecticut. The feasibility of such remedy is currently under investigation by a contractor, with a written proposal to be submitted to Wrapworks. In the event that the HVAC unit can be relocated to the garage without causing damage to the garage, the applicant hereby agrees not to unreasonably withhold consent to such action. Furthermore, the applicant agrees not to interfere with Wrapworks and ANC 2B's rights and obligations pursuant to the agreement attached hereto as Exhibit A.

2. The applicant agrees that construction will start no earlier than 7:00 a.m., and the applicant will make reasonable efforts to mitigate construction noise prior to 7:30 a.m.

3. Upon completion of the addition to 1611 through 1617 Connecticut Avenue, the applicant will provide for an enclosed facility for trash receptacles."

The Board encourages the applicant to abide by the terms and conditions of the Voluntary Agreement.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR §§ 3104.1, 774.2 and 774.9(a).

The Board received testimony from a nearby property owner who objected to the granting of the application. The property owner indicted that the applicant has not been a good neighbor. Specifically, the applicant had not handled well the disposal of trash at the site. The improper handling of trash at the site contributes to the severe rodent problem in the abutting alley and in the neighborhood.

The Board made note of the property owner's concerns. The applicant indicated that intermediary steps would be taken to solve the problem, until construction is complete. Thereafter, the on-site disposal of trash would be handled in a more efficient manner. In addition, the Board conditioned the Order accordingly.

The Board received correspondences recommending approval of the project from the Office of Planning (Exhibit 32) and the Department of Public Works (Exhibit 27). The Historic Preservation Review Board granted conceptual approval of the application (Exhibit 32A).

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, under 11 DCMR §§ 3104.1, 774.2 and 774.9(a). 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 this application be **GRANTED, SUBJECT** to the following **CONDITION:**

accordance with the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED, SUBJECT** to the following **CONDITION:**

- The applicant shall, immediately, secure a trash dumpster with a lid and hire a licensed trash company to remove waste from the site.

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.

**VOTE: 4-0-1** (Susan Morgan Hinton, Anne Mohnkern Renshaw, Sheila Cross Reid and Carol J. Mitten to approve; the third mayoral appointee not hearing the case, not voting.)

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

Each concurring Board member approved the issuance of this Order.

**ATTESTED BY:** _____
**JERRILY R. KRESS, FAIA**
**Director**

**FINAL DATE OF ORDER:** JUN 14 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 PURPOSES 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 THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

**BAB/5.18.01**

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**ATTESTATION NO. 16688:**

As Director of the Office of Zoning, I hereby certify and attest that on JUN 14 2001 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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**JERRILY R. KRESS, FAIA**
**Director**