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June 5, 2002

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BY HAND DELIVERY

D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: BZA Application No. 16815 – Application of Adams Alley, LLC (the "applicant") - Proposed Findings of Fact and Conclusions of Law

Dear Members of the Board:

Enclosed please find the applicant's proposed findings of fact and conclusions of law. The attached document is being served by hand, on this same date, to the party opponents in this case. The applicant looks forward to the Board of Zoning Adjustment's decision on this application at the June 11, 2002 special public meeting.

Respectfully Submitted,

John T. Epting

Paul A. Tummonds, Jr.

cc: ANC 1C
Simi Batra
Ruth Eisenberg

Document #: 1247732 v.1

BZA
Case No. 16815
Exhibit No. 56

Board of Zoning Adjustment
District of Columbia
CASE NO.16815
EXHIBIT NO.56

APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

GOVERNMENT OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Application No. 16815 of Adams Alley, LLC, pursuant to 11 DCMR 3103.2, for a variance from the floor area ratio requirements under Section 402, a variance from the nonconforming structure provisions for a building not meeting the lot occupancy requirements under Sections 403 and 2001.3, a variance from the off-street parking requirements of Section 2101, and a variance from the restrictions governing the use of alley lots under Section 2507, to allow the construction of an addition to an existing structure for a mixed-use (residential, office, and private club) building in a RC/R-5-B District at premises 2412 Rear 17th Street, N.W. (Square 2566, Lot 95).

HEARING DATES: **January 15, March 12, May 21 and May 29, 2002**

DECISION DATE: **June 11, 2002**

DECISION AND ORDER

PRELIMINARY MATTERS:

1. The original application proposed by Adams Alley, LLC (the "applicant") filed with the Board of Zoning Adjustment ("BZA" or "Board") requested both special exception and variance relief. The special exception approval was originally necessary to construct a building height in excess of what would be permitted as a matter-of-right in the Reed-Cooke Overlay District. The application also requested variance approval from the maximum permitted FAR in the R-5-B District; variance approval to construct an addition to a structure that exceeds the permitted lot occupancy requirements; and variance approval from the restrictions on the use of an alley lot.

2. After numerous meetings and discussions with members of the Reed-Cooke and Adams Morgan community, various changes were made to the project that

modified the necessary areas of zoning relief. As a result of these changes, the applicant requested the following relief:

- Variance relief from the floor area ratio requirements of §402;
- Variance relief to allow an addition to a structure that exceeds the permitted lot occupancy - §2001.3;
- Variance relief from the restrictions on the use of an alley lot - §2507; and
- Variance relief from the off-street parking requirements - §2101.

Due to a reduction in the building's height, special exception relief was no longer necessary. By letter dated February 22, 2002, the Zoning Administrator verified that the applicant had requested the appropriate areas of zoning relief to construct the project which is the subject of this application. (Applicant's Pre-Hearing Statement at p. 1, Exhibit 36, and Letter of the Zoning Administrator, Exhibit 42)

3. The initial application was scheduled for a public hearing on January 15, 2002. As a result of on-going discussions between the applicant and members of the surrounding community, the public hearing was rescheduled to March 15, 2002 and eventually to May 21, 2002. The postponements of the originally scheduled public hearing dates were supported by Advisory Neighborhood Commission ("ANC") 1C. (Exhibits 24 and 34 of the Record.)

4. At the May 15, 2002 public hearing, party status in opposition to the application was granted to Ruth Eisenberg, who lives at 1720 Euclid Street, N.W., and Simi Batra, who lives at 1710 Euclid Street, N.W.

5. As a preliminary matter at the May 21, 2002 Public Hearing, the Office of Corporation Counsel opined that in order to create a residential use (that is not a single

family home) on an alley lot, it is necessary for the applicant to be granted a use variance from 11 DCMR §2507.1, rather than an area variance.

SUMMARY OF EVIDENCE:

A. Project Description and Testimony of the Applicant and Applicant's Representatives

1. The property that is the subject of this application is Lot 95 in Square 2566, located at the premises known as 2412 Rear 17th Street, N.W. (the "subject property"). The subject property is a large alley lot that is generally bound by 17th Street to the east, Euclid Street to the north, Ontario Road to the west and Kalorama Road to the south. Vehicular and pedestrian access to the subject property is achieved via a 20 foot-wide public alley at the southern end of the subject property and a 15 foot-wide public alley at the northern end of the subject property. Both of these public alleys are accessed from 17th Street, N.W. The subject property includes a significant grade change from the northernmost point to the south end of the lot. This change in grade is approximately 12 feet. The lot area includes approximately 11,650 square feet. (Exhibit 36 at p.2.)

2. Pursuant to Zoning Commission Order No. 523-A, the subject property is located in the Reed-Cooke (RC)/R-5-B Zoning District. Prior to the adoption of Zoning Commission Order No. 523-A, the area surrounding the subject property included various industrial uses as well as residential uses. The predominant Zoning District in the area, including the subject property, was C-M-2.

3. The subject property is presently improved with a two-story building that has included many office, storage and warehouse uses in its history. One of the recent

tenants of the building was the Colortone Printing company and the building on the subject property is frequently called the Colortone Printing Building In addition, the Brass Knob is a tenant of the property using the space for warehouse use. Currently, the subject property has a certificate of occupancy for office/warehouse use. The appearance of the building on the subject property reflects its initial warehouse and storage use. The building was constructed to withstand heavy industrial uses and was not concerned with providing well-lit spaces for its occupants. The building is generally windowless along its eastern and western sides and includes a loading entrance at the southern end of the building that is easily accessible from the portion of the public alley that is 20 feet wide. (Exhibit 36 at p. 3.)

4. The building on the subject property was originally constructed for warehouse and industrial use in accordance with the C-M-2 Zoning District. The C-M-2 District permits a lot occupancy of 100% and a building height of up to 60 feet. The existing building presently occupies approximately 90% of the subject property. The C-M-2 Zone District does not permit residential use. The R-5-B District permits a lot occupancy of only 60%, so the existing building on the subject property is a non-conforming structure. The R-5-B Zone District permits apartment use as a matter-of-right. (Exhibit 36 at p.4.)

5. The applicant offered testimony and evidence from John Holmes, representative of the applicant, James Foster, project architect, Osborne George, Transportation Engineer, and Armando Lourenco, zoning and building code consultant.

6. Mr. John Holmes testified regarding the thorough and exhaustive five-month process that the applicant undertook to address the concern's of the community regarding the initial application. Mr. Holmes also discussed the changes that have been made to the project to address those concerns. Mr. Holmes noted that as a result of those changes, the application has received the unanimous support of Advisory Neighborhood Commission ("ANC") 1C, the ANC 1C Quality of Life Committee and the Reed-Cooke Neighborhood Association (RCNA). (Exhibit 36 at p. 4.)

7. Mr. Holmes also testified regarding the area in the project that will be rented to the Patricia M. Sitar Center (the "Sitar Center") at below-market rates. Mr. Holmes noted that the Sitar Center is a non-profit organization that provides music and arts education to children, and some adults that live in the Adams Morgan and Reed-Cooke neighborhoods. The Sitar Center is classified as a private club pursuant to the Zoning Regulations. The Sitar Center is presently located at 2525 Ontario Road, N.W. and occupies approximately 2,500 square feet of space. Current enrollment at the Sitar Center is 101 students (83 children and 18 adults). At their present location, the Sitar Center experiences a maximum number of students attending classes at any one time of approximately 25-30 students. In its new space in this project, the Sitar Center expects to have a maximum of 50-60 students at the project at any one time. Since the students are members of the neighborhood, the vast majority of the students walk to the existing location and are expected to walk to the new Sitar Center on the subject property. (Exhibit 36 at p. 5.)

8. Mr. Holmes also noted that the applicant proposed eight conditions of approval for the project. These conditions include:

a) Limitation on the permitted private club use of the property to the Sitar Center, another organization similar to the Sitar Center, or to seek ANC approval to substitute another use.

b) Prohibition of the issuance of an Alcohol Beverage Control ("ABC") License for any use on the property.

c) The Sitar Center will provide an alley crossing guard at the southern alley entrance at peak times of its use. All students of the Sitar Center shall access the site via the southern alley entrance. Signage will be installed at the southern alley entrance noting the potential presence of children in the alley.

d) Agreement to work with the community to rename the southern 20 foot wide public alley "Reed Cooke Plaza" with appropriate signage.

e) Placement of a plaque on the building noting the Colortone Printing Company's former use of the building and the building's relationship to the Reed Cooke neighborhood.

f) Work with ANC 1C to establish a construction management plan and construction staging plan.

g) The Applicant will work with the Sitar Center to provide the Reed Cooke Neighborhood Association, and other community organizations with appropriate meeting space for community meetings.

h) The Applicant will work with the Department of Public Works (District Department of Transportation) and the Ward 1 Councilmember's Office to facilitate the repair and refurbishment of the existing alley system that surrounds the subject site, with special attention to be paid to the creation of a paved alley on the western side of the subject site where the alley is presently not paved and in poor condition.

(Exhibit 36, Pre-Hearing Statement, Exhibit L.)

9. Mr. James Foster, admitted as an expert witness in the field of architecture, discussed the plans, layout and appearance of the proposed mixed-use project. Mr. Foster testified that the project will include 12 residential units that will

occupy approximately 16,000 square feet of gross floor area in a two-story residential addition to the existing building. In addition, the Sitar Center will occupy approximately 12,000 square feet of space and approximately 3,500 square feet of gross floor area will be available for office/community organization use. The total gross floor area included in the building is 34,291 square feet, giving the proposed mixed-use development a floor area ratio (FAR) of 2.94. (Exhibit 36 at p.4.)

10. Mr. Foster testified that the residential units have been carefully designed to incorporate the previous use of the building, while also minimizing impact on neighboring properties. The proposed project will have a total height of only 31 feet, 6 inches. All of the 12 residential units will be two-bedroom units. The residential units will have direct access to the parking garage level that is separated from the non-residential access to the parking garage level. All of the residential units will have two floors to provide more natural light for the units and will have direct access to a roof terrace. (Exhibit 36 at p.4-5.)

11. Mr. Foster also discussed the revisions to the original application that incorporated a walkway inside the building (along its east side) that will allow the student members of the Sitar Center to arrive at the Center without having to walk through the narrower north/south portion of the alley. The walkway will be utilized by all of the student members of the Sitar Center to enter the building via the widest part of the alley system surrounding the subject property. (Exhibit 36 at p.5.)

12. Mr. Foster testified that the project will include 24 parking spaces that will be accessed from the southern end of the subject property via the widest portion of the

alley system in Square 2566, at the lowest level of the existing building. Each residential unit will be offered a parking space and the remaining parking spaces will be provided for the non-residential (Sitar Center and office/community organization) use. Mr. Foster noted that the original proposal included a second parking level, accessed from the western alley side of the subject property. The original project included a total of 32-36 parking spaces. In response to community concerns regarding potential traffic and congestion, this entire level of parking was removed from the project. (Exhibit 36 at p. 6.)

13. Mr. Osborne George, admitted as an expert in traffic engineering, testified as to the traffic and parking impacts that the project will have on the surrounding alley and street system and concluded that the proposed project should have no adverse or potentially objectionable impacts on properties and land uses within its vicinity based on traffic generation and parking demand. As discussed in the Traffic Impact Assessment and Addendum submitted as part of the applicant's pre-hearing statement, and in testimony at the May 29, 2002 Public Hearing, Mr. George noted that the prospective trip making characteristics of the proposed project indicate that the number of vehicular trips created by the project would be quite low, the project's traffic impact would be negligible, and the project would have no appreciable impact on future traffic conditions in the area. (Exhibit 36, Pre-Hearing Statement Exhibit I, p.3, 14.)

14. Mr. George stated that in order to address some concerns raised by members of the community regarding potential vehicular/pedestrian conflicts in the alley system, considerable emphasis was placed in his study on the safety of pedestrian access

to the site, service vehicle access, and the adequacy of off-street parking spaces provided in the project. (Exhibit 36, Pre-Hearing Statement Exhibit I, p.3.)

15. In regards to the pedestrian access issue, Mr. George noted that the applicant will work with the District Department of Transportation (DOT) to create a four-foot striped pedestrian area in the southern (20 foot wide) alley to provide a space for pedestrians to walk to the building on the subject property. The adding of the internal walkway, the provision of an alley crossing guard stationed at the southern alleyway entrance to 17th Street during peak activity periods for the Sitar Center, and creation of the striped pedestrian space in the 20 foot wide alley are great improvements to the project and fully address community concerns that were raised regarding potential pedestrian and vehicular conflict in the alley. (Exhibit 36, p. 5-6, Exhibit I, p. 18 and p.3 of May 1, 2002 Technical Memorandum.)

16. In regards to service vehicle access, Mr. George noted that project will provide a vehicular turn-around area, off of the public alley, at the southern edge of the subject property and that the applicant proposes that all vehicular access to and from the site will be via the 20-foot wide two-way southern alley. Mr. George noted that service vehicles will be able to adequately and efficiently access the project and will not cause the blockage of access to the parking garage. (Exhibit 36, Pre-Hearing Statement, Exhibit I, p.3 of May 1, 2002 Technical Memorandum.)

17. Mr. George noted that the 24 parking spaces provided in the project are sufficient to meet the demand for parking generated by the project. Mr. George's report and testimony of the architect noted that the project would provide 12 parking spaces for

the residential uses, 6-10 parking spaces for the Sitar Center use and 2-6 parking spaces for the office/community organization use. Mr. George concluded that based on the operational needs of the Sitar Center, the supply of parking spaces provided exceeds the needs of the development. Mr. George also noted that the Reed-Cooke Overlay District emphasizes the use of "shared parking" for different uses and that this project is ideally suited to this concept. (Exhibit 36, p. 19 of Exhibit I.)

18. Mr. Armando Lourenco, admitted as an expert witness in regards to the D.C. Zoning Regulations and Building Code, testified as to the project's satisfaction of the variance relief standards of the Zoning Regulations for each of the four requested areas of zoning relief. Mr. Lourenco concluded that the applicant met the burden of proof on the three tests for variance relief - exceptional conditions, exceptional practical difficulties or undue hardship and no substantial detriment to public good or zone plan - for each of the four cases where variance relief was sought and the applicant should be entitled to the requested variance relief.

19. In regards to the requested variance relief from the maximum FAR requirements of §402, Mr. Lourenco testified that the property has been improved with an unusually sturdy concrete structure designed to withstand the rigors of the machinery typical of industrial uses. The existing structure is characterized by over-sized concrete slabs supported on a skeleton of reinforced concrete columns at the exterior of the building. Mr. Lourenco noted that such a structure is quite rare, even more so when such a building is located on a lot surrounded by alleys. Based on his expert opinion, Mr. Lourenco noted these factors as evidence the subject property's unique and exceptional

situation. Mr. Lourenco noted that the ceiling heights, column distribution and slab thicknesses make this structure particularly inappropriate to house the residential uses that are desirable in Reed- Cooke. Mr. Lourenco also stated that due to the existing gross floor area that already exists in the building on the subject property, only 0.32 FAR is available for the residential addition. Thus, Mr. Lourenco concluded that the subject property meets the exceptional difficulty criterion for the granting of the requested FAR variance. Finally, Mr. Lourenco concluded that the proposed development fulfills two of the main objectives of the Comprehensive Plan for the Reed-Cooke Special Treatment Area: (a) "to provide for the development of new housing" and (b) "to ensure that new non-residential uses serve the local community by providing (...) activities that contribute to the satisfaction of unmet social (and) service needs in the (...) community." Mr. Lourenco noted that granting the FAR variance will render the project economically feasible, thereby enabling development that has the support of the community and contributes substantially to the goals of the zone plan.

20. In regards to the requested variance relief to allow an addition to a building already in excess of the maximum lot occupancy - §2001.3, Mr. Lourenco noted that the same arguments for the unusual and exceptional conditions of the property apply for this variance relief. Mr. Lourenco testified that the elevated cost of removing all or a portion of the existing structure makes it an economically unfeasible option. In his opinion, not granting the variance to expand the existing building would make it extremely difficult to redevelop the property in a manner that is consistent with the purposes of Reed-Cooke. Mr. Lourenco also noted that this hardship was not created by

the owners of the property. Rather, it results from an action of the Zoning Commission when it rezoned the property from a district where the building occupied only 90% of the allowable lot occupancy, to a district where the existing structure exceeds the allowable lot occupancy limit.

21. In regards to the requested variance relief from the restrictions on the use of alley lots - §2507, Mr. Lourenco testified that the applicant is seeking a use variance from the restriction of Section 2507.1 and area variances from the additional restrictions of §2507.3, and §2507.4. Mr. Lourenco noted that in addition to his previous arguments for the unusual conditions of this property, in this respect the situation of lot 95 is also unusual because "alley lots" are usually smaller and front only on one alley. In effect, lot 95 could be served from all sides, yet it is subject to the same restrictions of alley lots that are landlocked and have no access but through a single alley.

22. Mr. Lourenco testified that the letter of the Zoning Regulations in §2507, as restated by Corporation Counsel, would limit the residential redevelopment options of the owner to converting the building to one-family dwelling use, possibly with more than one residence. Mr. Lourenco noted that such use would require extensive relief that would be necessary to overcome insufficient width of the alleys, insufficient depth for rear yards, over occupation of the lot, inability to subdivide the lot for lack of street frontage, etc. Mr. Lourenco stated that demolition of this odd structure would be necessary for the reasonable conversion of this property to single-family dwelling use, it is also very unlikely that the applicant could market detached single-family dwellings on this site. This path of redevelopment is clearly economically unfeasible and an undue

hardship on the applicant. Mr. Lourenceo opined that the aforementioned circumstances and obstacles to redevelop the property with the only residential use that is allowed by 2507, establish the inability of the applicant to make a reasonable conversion of the property for a permitted use. In regards to these use and area variances, Mr. Lourenco concluded that the applicant fulfilled its burden of showing that an undue hardship will result from the strict application of the letter of the Zoning Regulations and the applicant is entitled to variance relief.

23. In regards to the requested variance relief from the off-street parking requirements of §2101, Mr. Lourenco, confirmed that the applicant had appropriately calculated the amount of required off-street parking spaces and that a variance of four parking spaces was required. Mr. Lourenco noted that in addition to the previously mentioned arguments of the extent to which the existing building occupies the lot, there are two other issues that make this property exceptional in relation to the parking requirement. First, alley lot properties do not typically provide on-site off-street parking. Such is the case, for example, of the current Colortone building. The provision of parking on site, to serve the uses established on the property is, in itself, unusual for alley lots. Secondly, the combination of the topography of the site [sloping down approximately 12 ft from north to south] with the tight clearances imposed by the widths of the four surrounding alleys [that range from 10 ft to 17 ft], create an exceptional condition that few alley lots of this size present.

24. Mr. Lourenco also noted that the proposed 24 spaces can be provided within a single parking level. The provision of the additional four spaces that would be

required to meet the letter of the regulations would require two levels. This would either entail a very costly excavation, within the existing building, and underpinning of its columns and walls, or the loss of a substantial amount of the private club space proposed to be leased at below market rates. Mr. Lourenco also testified that access to two levels of parking would complicate the traffic patterns in the alley system and overburden the adjoining alleys, since two garage entrances would be required, instead of the proposed single entrance.

B. Testimony and Report of the Office of Planning

1. The Office of Planning (OP), by its report dated May 14, 2002 and through testimony presented at the May 29, 2002 public hearing, recommended approval of the variance applications. OP noted that the proposed development is consistent with the aim of the Reed-Cooke Special Treatment Area of the Comprehensive Plan, the Reed-Cooke Overlay District, and the goals of the City to develop a vibrant residential neighborhood and also provide community service uses on the site. (Exhibit 37 p.1, 2 and 9.)

2. In its testimony at the public hearing and report to the Board, the Office of Planning noted that the applicant has fully satisfied the standards of relief related to the necessary variance approvals regarding: the use of an alley lot; the maximum lot occupancy and expansion of a non-conforming structure; the maximum FAR and the off-street parking requirements of the Zoning Regulations. (Exhibit 37, p. 5-9.)

3. The OP report noted that two points of access into the Sitar Center are provided in the project. A formal entrance at the northeast corner of the building for guests, staff and volunteers, and a separate access at the southeast corner of the building for Sitar Center students. The OP report noted that in order to provide protection for the

children walking to and from the Sitar Center, the children will only be allowed to access the building at the southern entrance which leads to a foyer where the students are checked in and to an internal walkway/ramp that takes the students to the second floor. (Exhibit 37, p. 4.)

4. The OP report noted that DOT, by memo dated May 13, 2002, indicated that it had some concerns regarding pedestrian use of the alley and recommended that circulation in the alley be one-way with traffic entering the alley system through the southern 20-foot alley and exiting the alley system through the northern 15-foot alley. (Exhibit 37, p. 4.)

5. The OP report also indicated that the application was referred to the DC Fire and Emergency Medical Services Department. By memorandum dated February 20, 2002, the Fire and Emergency Medical Services Department recommended approval of the project, provided the applicant agrees to install a fire sprinkler system in the entire building in accordance with the D.C. Building Code and that the residential portion of the building be installed with residential sprinklers. (Exhibit 53.)

6. The OP report also noted that the D.C. Fire and Emergency Medical Services Department stated that service and emergency vehicle access will continue as presently provided for in the alley system. (Exhibit 37, p. 4.)

7. OP recommended approval of the application with eight conditions:

   a. If the Sitar Center vacates the second floor, any replacement use shall be reviewed by the ANC, relevant neighborhood organization, and residents of the surrounding buildings.

   b. The Sitar Center will provide an alley crossing guard at the southern entrance at peak times of use.

c. Students of the Sitar Center shall only access the center via the southern alley entrance.

d. The applicant shall submit into the record a construction management plan and staging plan.

e. The applicant will dedicate space in the building for community use.

f. The applicant will provide a distinct 4-foot walkway for pedestrian use along the 20-foot alley off of 17th Street.

g. The applicant will be responsible for the repair and repaving of the surrounding alleys in coordination with DDOT. The improvements should discourage speeding and illegal parking in the alley.

h. Circulation through the alley system should be one-way in through the southern 20-foot alley and exit through the northern 15-foot alley.

(Exhibit 37 at p. 9-10.)

8. In response to OP's conditions, the applicant noted its concern with Conditions f-h. In regard to the 4-foot walkway in the southern alley, the applicant's traffic engineer noted that it was the applicant's proposal to work with DOT to clearly delineate the walkway area and not require any sort of sidewalk construction. The applicant also noted that it would work with DOT and the Ward 1 Councilmember to facilitate the repair and refurbishment of the existing alley system. (Exhibit 36, attachment L).

9. In regards to the adoption of a one-way circulation system in the alley, as proposed by DOT in its memo dated May 13, 2002, the applicant's traffic engineer noted that the DOT proposal would:

a) Greatly increase the traffic volumes in the area of the community center, with a certain and significant increase in pedestrian-vehicle conflicts, within the square and at the two access points; and

b) Result in considerable redundancy of travel within the alleyway system and would require vehicles accessing the commercial use in other parts of the Square to travel through the entire Square to exit onto 17th Street via the 15-foot alley at the northern end of the Square, which may not be possible given the necessary turning radii at the northern 15 foot alley.

The applicant's traffic engineer concluded that the low traffic volume usage in the alley, its dispersal within the alleyway system (as it exists), and the provisions proposed by the applicant for the alley crossing guard to be present during peak periods of activity for the school will be adequate to ensure safety in the alley system in the Square.

C. Support of Advisory Neighborhood Commission (ANC 1C)

1. ANC 1C submitted a letter into the record, dated May 21, 2002, that evidenced the ANC's adoption of a unanimous resolution in support of the application. The ANC's resolution noted that the ANC had reviewed the plans for the proposed project and determined that the project "will bring active and vibrant residential and community-oriented uses to the area, in a project that is appropriate in size and scale for the property." The ANC resolution also commended the applicant for the extensive effort that was undertaken to solicit community input and make revisions to the project to address community concerns. (Exhibit 43.)

2. The Quality of Life Committee of ANC 1C also submitted a resolution in support of the application into the record of this case. The Quality of Life Committee resolution stated that the proposed project "would be a significant benefit to the Reed-Cooke and Adams Morgan neighborhoods and that the proposed mixed-use residential project is in keeping with the size and scale of other buildings in the surrounding area and will not cause adverse impacts on surrounding properties due to loss of light or air." (Exhibit 50.)

D. Support of the Reed-Cooke Neighborhood Association

1. By letter dated May 16, 2002, and by testimony of Mr. Edward Jackson Sr. at the May 21, 2002 public hearing, the Reed Cooke Neighborhood Association (RCNA) evidenced the adoption of a unanimous resolution (9-0) in support of the applicant's four requests for zoning variances. The RCNA resolution noted that the vote was a result of a number of meetings with the developers and OP and resolution of a number of community concerns, including the reduction of the original proposed building height to a height that conformed with the Reed-Cooke zoning overlay. The RCNA resolution included a number of conditions of approval that were created with the applicant. These conditions included the following:

a. Limitations be placed on the permitted private club use of the property to the Sitar Center, or another organization similar to the Sitar Center, which would be providing community based services. Any change of use from the Sitar Center to another organization should be approved by ANC 1-C and the Reed-Cooke Neighborhood Association. In the event of opposing positions between the ANC and the Reed-Cooke Neighborhood Association, the Reed-Cooke Neighborhood Association vote would prevail. We take this position because of the immediate impact of the change on the residents of the Reed-Cooke Neighborhood, and their work to produce the Reed-Cooke Zoning Overlay.

b. An absolute prohibition on the issuance of any Alcohol Beverage Control ("**ABC**") license for any use on the property.

c. Signs be posted at the southern alley entrance from 17th Street warning of the potential presence of children in the alley, and that during the peak times of use the Sitar Center will provide a crossing guard in that alley.

d. The 20 foot wide southern alley from 17th Street to the property be designate "Reed-Cook Plaza" by appropriate signs. The Reed-Cooke Neighborhood Association is prepared to work with the DC Department of Transportation and Adams Alley LLC to facilitate the designation.

e. We request Adams Alley LLC place a plaque on the building noting the former use of the building by the Colortone Printing Company, and its relationship to the Reed-Cooke Neighborhood.

f. The developer will work with the Reed-Cooke Neighborhood Association and ANC 1-C to develop a construction management and construction material staging plan, to mitigate the impact of the construction work on the adjacent properties. This plan is to insure the safety of neighborhood residents, and provide a structure for the developer and the impacted residents to resolve any conflicts that may arise.

g. Adams Alley LLC will provide Reed-Cooke Neighborhood Association and ANC 1-C with office space and meeting space for community meetings. The Reed-Cooke Neighborhood Association is prepared to work with the Sitar Center and Adams Alley LLC to arrive at reasonable amount of working space for these neighborhood groups.

h. The alley surrounding the Adams Alley LLC property is in need of substantial repair on the west and north sides of the property. The alley on the east side of the property requires replacement of the existing road surface. Adams Alley LLC, the DC Department of Transportation in conjunction with our Ward 1 Councilmember's office will facilitate all repairs and refurbishments.

i. The new units to be constructed will not be rental units, but will be market rate housing.

(Exhibit 38.)

E. Letters in Support of the Application

1. Ward 1 Councilmember Jim Graham, by letter dated May 21, 2002, supported the application. Councilmember Graham noted that the transformation of this former industrial space into residential and other community oriented uses will be a significant benefit to the immediate neighbors as well as the larger Reed-Cooke neighborhood. Councilmember Graham stated that providing below-market rental rates for the Sitar Center is a community benefit, as is having activity in the alley, which will discourage the various illegal and unwanted activities that currently occur in the alley. Councilmember Graham also stated that he would work with the applicant and DOT to

bring about the appropriate renovation of the alley system. Mr. Graham concluded his letter by commending the applicant for its outreach to the community and attention to the community's concerns. (Exhibit 52.)

2. The Patricia M. Sitar Center for the Arts submitted a letter in support of the application. The letter, dated May 17, 2002 and signed by Rhonda Buckley (Executive Director), mentioned the considerable discussions that have occurred with the applicant to make sure that the space provided in the building for the Sitar Center is adequate to meet its needs and also to ensure that the students can get to the Center in a safe manner. Ms. Buckley noted that the inclusion of the dedicated walkway inside the building and the provision of an alley crossing guard being present at peak times when students come to the Sitar Center results in a safe and efficient system for the children to access the Sitar Center space. (Exhibit 40.)

3. In addition, seven letters in support of the application were received from members of the surrounding neighborhood. In general, these letters noted the benefits to the community that the proposed project would create as a result of having the residential and Sitar Center uses on the property. These supporters of the project also stated that they felt the project was of an appropriate size and would not create any adverse traffic or parking impacts in the neighborhood. (Exhibits 31-33 and 51.)

F. Testimony of Party Opponents

1. On June 3, 2002, Simi Batra filed his statement in opposition to the application. Mr. Batra stated that he opposed the project because the applicant failed to adequately address necessary issues regarding the four requested variances. Mr. Batra also noted that he did not agree with the DOT proposal to create a one-way alley system

in the Square. (Exhibit __.) The applicant, by response dated June 5, 2002, addressed the issues raised by Mr. Batra. (Exhibit ___.)

2. Ruth Eisenberg, the other person granted party status in opposition to the application, did not provide any testimony or statement in opposition to the application.

FINDINGS OF FACT:

1. The applicant is seeking variance relief from four sections of the Zoning Regulations; §402 – maximum allowable floor area ratio, §2001.3 – addition to a structure that exceeds the permitted lot occupancy, §2507 – restrictions on the use of an alley lot, and §2101 – off-street parking requirements.

2. The proposed mixed-use project will include approximately 16,000 square feet of residential space in 12 two-bedroom units, approximately 12,000 square feet of space used by the Sitar Center, and approximately 3,500 square feet of space for office/community organization use. The proposed project will have a building height of 31 feet, 6 inches and will have a total FAR of 2.94.

3. The applicant's proposal to maintain the two-way traffic circulation system in the Square, provide a vehicular drop-off area on the subject property, provide a pedestrian walk-way inside the building and provide a delineated pedestrian walk-way in the southern 20-foot alley, are all appropriate and effective proposals that will help minimize vehicular and pedestrian conflict in the existing alley system.

4. Based on the memorandum of the D.C. Fire and Emergency Services memorandum and the OP report, the approval of this application will not raise any fire or life safety issues. The Board also finds that the provision of 24 parking spaces in the project is sufficient to satisfy the parking demand generated by the project.

5. In reliance on the testimony and statements of the applicant's traffic and parking engineering expert, the RCNA representative and even one of the parties in opposition to the application, the Board finds that the DOT proposal to make the alley system in the Square one-way will result in a complicated, burdensome and unworkable situation for the future residents of the subject property and the existing residents of the area. The Board believes that the existing two-way traffic circulation system should be maintained, with the inclusion of the applicant's proposals for signage and the delineated walkway, and the DOT proposal should not be implemented.

6. The applicant has proposed eight conditions of approval that address issues and concerns raised by members of the surrounding community, OP and DOT. The Board determines that the inclusion of those conditions in its approval of this application will help assure that the project will not create any objectionable impacts on neighboring properties and will in fact be a benefit to the surrounding community.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the applicant has met the test for the granting of the requested area and use variance relief. The Board concludes that the subject property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty to and exceptional and undue hardship on the applicant in satisfying the Zoning Regulations and that the intent, purpose and integrity of the Zone Plan will not be impaired by granting these variance applications.

The Board concludes that the subject property is affected by an extraordinary and exceptional situation in that the subject property is a large alley lot surrounded on all four

sides by alleys which was formerly zoned C-M-2 and was "down-zoned" to the RC/R-5-B Zoning District.

The Board also concludes that a strict application of the Zoning Regulations will result in practical difficulty and undue hardship to the applicant. The subject property is improved with a large concrete structure that was designed and used for heavy industrial and warehouse uses. The existing structure is not suitable for residential uses. The applicant noted that demolition of the existing structure would be very costly, would result in significant impact on the surrounding properties and members of the community have expressed a desire for the existing building to remain and be noted for the Colortone Printing Companies long-standing commitment to the Reed-Cooke neighborhood. Based on the applicant's zoning and building code expert's testimony, we conclude that the applicant has satisfied the requirement of showing practical difficulty and undue hardship.

The Board finds that granting the requested variance relief helps achieve the intent and goals of the Zone Plan for this area as defined in the Reed Cooke Overlay of the Zoning Regulations as well as the goals of the Comprehensive Plan. As noted by the applicant and OP, the Reed Cooke Overlay was established to accomplish the following goals:

1) Implement the objectives of the Reed Cooke Special Treatment Area of the Comprehensive Plan of the District of Columbia. These objectives include:

(a) Protect current housing in the area, and provide for the development of new housing;

(b) Maintain heights and densities at appropriate levels; and

(c) Encourage small-scale business development that will not adversely affect the residential community. (10 DCMR 1127.2 (a-c)); and

2) Ensure that new non-residential uses serve the local community by providing retail goods, personal services and other activities that contribute to the satisfaction of unmet social, service, and employment needs in the Reed Cooke and Adams Morgan community; and

3) Protect adjacent and nearby residences from damaging traffic, parking and environmental, social and aesthetic impacts. (11 DCMR 1400.2).

The Board concludes that the proposed project fully satisfies the intent and letter of the Reed Cooke Overlay, as well as the Comprehensive Plan's Generalized Land Use Map designation of this area. Increasing residential opportunities for more residents in the Reed Cooke and Adams Morgan neighborhoods and removing industrial uses from the area make this project entirely consistent with the Reed Cooke Overlay and Comprehensive Plan. The Board also concludes that the inclusion of space for the Sitar Center is further evidence of the project's promotion of the goals of the Reed Cooke Overlay. The Sitar Center provides educational experiences in music and the arts for the children of this neighborhood that are not being satisfied elsewhere in the neighborhood. The Board has determined that the proposed mixed-use residential and community oriented service uses are fully consistent with the Comprehensive Plan Land Use Map designation of the subject property as moderate density residential. The low height and density of the residential portion of the project is entirely consistent with the moderate density designation.

The Board agrees with the statements of the applicant, members of RCNA and the Ward 1 Councilmember that the proposed project will create a safer environment in the alley for all residents of Square 2566 and the surrounding neighborhood. Having a 24 hour presence in the alley through the creation of residential units will discourage illicit activities in the alley system that currently exist. Moreover, proper development of the subject property will result in the improvement of the condition of the alley and the removal of the various abandoned or semi-abandoned vehicles.

The Board accorded ANC 1C the "great weight" to which it is entitled. In addition, the Board notes the support of the Quality of Life Committee of ANC 1C, Ward 1 Councilmember Jim Graham, the Reed-Cooke Neighborhood Association and numerous residents in the area surrounding the site.

Further, as to the testimony and concerns of the opposition parties, the Board finds that the conditions to be included in this Order approving the application will adequately address their concerns.

For the reasons stated above, the Board concludes that the applicant has met the requisite burden, and it is hereby **ORDERED** that the application be **GRANTED** subject to the following **CONDITIONS:**

1) The permitted private club use of the property is limited to the Sitar Center or another organization similar to the Sitar Center. In the event that the applicant desires to have any other use, it must seek ANC approval to substitute such another use.

2) No Alcohol Beverage Control ("ABC") License shall be issued for any use on the subject property.

3) The Sitar Center will provide an alley crossing guard at the southern alley entrance at peak times of its use. All students of the Sitar Center shall access the site via the southern alley entrance. Signage will be installed at the southern alley entrance noting the potential presence of children in the alley.

4) The applicant shall work with the community to rename the southern 20 foot wide public alley "Reed Cooke Plaza" with appropriate signage.

5) The applicant shall place a plaque on the building noting the Colortone Printing Company's former use of the building and the building's relationship to the Reed-Cooke neighborhood.

6) The applicant shall work with ANC 1C to establish a construction management plan and construction staging plan for the construction of the project.

7) The Applicant shall work with the Sitar Center to provide the Reed-Cooke Neighborhood Association, and other community organizations with appropriate meeting space for community meetings.

8) The Applicant shall work with the District Department of Transportation and the Ward 1 Councilmember's Office to facilitate the repair and refurbishment of the existing alley system that surrounds the subject site, with special attention to be paid to

the creation of a paved alley on the western side of the subject site where the alley is presently not paved and in poor condition.

9) The applicant shall work with District Department of Transportation to create a proper delineation and striping of the four-foot pedestrian walk-way in the 20-foot two-way southern alley.

10) The alley system in Square 2566 shall remain a two-way alley throughout the entire Square.

VOTE:

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

ATTESTED BY: _____
JERRILY KRESS
SECRETARY TO THE BOARD

Document #: 1246983 v.1

ShawPittman LLP

June 5, 2002

BY HAND DELIVERY

D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: BZA Application No. 16815 –
2412 Rear 17th Street, NW
Application of Adams Alley, LLC (the "applicant")
Response to Testimony of Simi Batra – Party Opponent

Dear Members of the Board:

This letter responds to the issues that were raised by Simi Batra, party opponent in this case, in his testimony submitted to the Board on June 3, 2002. It is important to note that the applicant absolutely agrees with Mr. Batra's view that the alley system in the Square should not be made one-way, as the Department of Transportation mentioned in its report in this case. Otherwise, the applicant strongly disagrees with the statements made in Mr. Batra's written testimony.

The applicant disputes Mr. Batra's statement that the individuals who support the application, by letter or testimony, do not have access to the alley surrounding the Colortone Building. In fact, Mr. Bradford-El lives in a building immediately adjacent to the site which has alley access. In addition, Michael and Kelly Malarkey and Vince Musi all submitted letters in support of this application and they live in the Morgan Annex building located at 2428 17th Street, N.W. which has parking spaces that are accessed off of the alley. All of these property owners live as close, or closer, to the project than Mr. Batra. As a result of the five month process of negotiating with the community, the applicant has been able to gain the support of numerous individuals that were initially opposed to the project. The only individuals that have participated in this process that do not now support the application, are Mr. Batra and Ms. Eisenberg.

The applicant believes that Mr. Batra's arguments regarding the project's consistency with the goals of the Reed-Cooke Overlay and the Comprehensive Plan are not correct. As the applicant's zoning expert testified at the public hearing and as outlined in the Office of Planning report and testimony, this project is fully consistent with the goals of the Reed-Cooke Overlay to provide additional residential housing, remove former industrial uses from the neighborhood and

provide for unmet social needs. Mr. Batra's focus on the price that the applicant paid for the building has no bearing on the fact that this project is fully consistent with the goals of the Reed-Cooke Overlay, and such price is not relevant to such a zoning hearing.

In addition, the applicant reiterates the comments and testimony of Mr. Holmes and Mr. Lourenco from the two public hearings in this case regarding the existing conditions of the Colortone Building and the practical difficulties that exist in meeting the strict application of the Zoning Regulations. The only way that the applicant could satisfy Mr. Batra's concerns regarding FAR, lot occupancy and the residential uses on the alley would be to demolish the existing building. The demolition of this very substantial concrete building would be extremely disruptive to the residents of this area and would be contrary to the desires of many residents of this neighborhood that would like to see the existing building remain and the Colortone Printing Company be given recognition for its commitment to the Reed-Cooke neighborhood.

The applicant relies on the testimony of its experts that the proposed mixed-use building provides appropriate light and air to the residential units without causing an adverse impact on neighboring properties, a safe and efficient vehicular and pedestrian traffic circulation system in the alley and an appropriate amount of parking on the site.

With this submission, the applicant believes that the record is complete and all issues have been adequately addressed. Accordingly, the applicant looks forward to the Board's decision on this application as soon as possible so that this important project can move forward and benefit the community.

Respectfully Submitted,

John T. Epting

Paul A. Tummonds, Jr.

cc: ANC 1C
Simi Batra
Ruth Eisenberg