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May 24, 2002

D.C. BOARD OF ZONING
2002 MAY 24 AM 11:08

D.C. Board of Zoning Adjustment
441 4th Street, N.W., Suite 200
Washington, D.C. 20001

Re: BZA Application No. 16869
Proposed Findings of Fact and
Conclusions of Law

Dear Members of the Board:

The Applicant in the above-referenced matter hereby submits its Proposed Findings of Fact and Conclusions of Law in accordance with the Board's instruction at the conclusion of the hearing on April 30, 2002.

Please contact the undersigned if there are any additional questions or concerns at (202) 429-9000.

Sincerely yours,

GRIFFIN, FARMER & MURPHY, LLP

By _____
Jonathan L. Farmer
Counsel for Applicant
King's Creek, LLC

Enclosure
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BZA
Case No. 16869
Exhibit No. 32
Board of Zoning Adjustment
District of Columbia
CASE NO.16869
EXHIBIT NO.32

BEFORE THE BOARD OF ZONING ADJUSTMENT

OF THE DISTRICT OF COLUMBIA

Applicant's Proposed Findings of Fact and Conclusions of Law

Application of King's Creek, LLC, pursuant to 11 DCMR §3103.2, for a variance from the floor area ratio requirements under Section 402, a variance from the lot occupancy requirements under Section 403, and a variance from the non-conforming structure provisions under Section 2001.3, and pursuant to 11 DCMR §3104.1, a special exception to exceed the height provisions (Section 1402) of the Reed-Cooke Overlay District under Section 1403, to construct an addition to an existing building for a mixed use (residential and retail) development in the Reed-Cooke/R-5-B District at premises 2329 Champlain Street, N.W. (Square 2563, Lot 103).

ZONING COMMISSION
2002 JUN 12 AM 11: 08

Hearing Date: April 30, 2002
Decision Date: June 4, 2002

Summary of Evidence:

1. The subject property is located in the RC/R-5-B District on the east side of Champlain Street, N.W. north of its intersection with Kalorama Road, N.W.

2. The subject property is a 9,652 square feet lot occupied with a two story building with a footprint of 9,395 square feet. Lot occupancy is 97.3 percent. The height of the existing structure is 31.5 feet. The total existing building area is 18,401 square feet.

3. The subject site is improved with a stone, steel, concrete and brick structure that was erected as an automobile garage in 1924. The site is currently used as retail, office and storage space.

4. The subject site was originally zoned CM. The site was re-zoned by the Zoning Commission to R-5-B in 1987. The Zoning Commission created the Reed-Cooke Overlay in 1991 and the provisions of said overlay apply to the subject site.

5. The RC/R-5-B Zoning District permits developments of moderate height and density. This zone is designed to permit flexibility for all types of urban residential developments along with those institutional and semi-public buildings that are compatible with adjoining residential units. The Reed-Cooke Overlay District is designed to protect existing housing, provide for new residential development, and encourage small-scale business development that does not adversely affect the residential uses.

6. The RC/R-5-B Zoning District allows a lot occupancy of 60 percent, a floor area ratio of 1.8 and a maximum height of 40 feet. A total of 7 parking spaces would be required by the Applicant's proposal in this Zoning District.

7. The subject site is located in the Reed-Cooke neighborhood and is surrounded by a variety of uses but the area is predominantly residential. The area has a wide variety of buildings including auto repair shops, electroplating facilities, open parking lots, two story single family residential buildings and apartment houses, some of which are between five and seven stories. Directly to the west of the subject site is a mixed use development, known as the Lofts of Adams Morgan that contains 57 residential units, 4,000 square feet of retail space and has a height of 56 feet.

8. The Applicant proposes a mixed use development on the subject site. The existing building on the site will be retained in its entirety and four additional levels with 13 residential apartments will be added to the structure. The existing retail use on the first floor will be retained while the second floor will be renovated for parking and residential use. The Applicant has agreed with representatives of neighborhood interests to provide at least one "affordable" residential unit in the project.

9. The Applicant testified that, after due consideration of the requirements of the Reed-Cooke Overlay District, it was determined that the goals of the District would be best achieved by retaining the existing structure and its existing retail tenant. He stated that the existing structure, while not a designated landmark, was a unique architectural style that had substantial significance in the neighborhood. He further stated that one of his main goals was to ensure the continued presence of the Brass Knob in the Adams Morgan neighborhood because of its long time and much desired presence in the neighborhood. The Applicant indicated that the existing structure's unique physical construction provided an opportunity to add a significant amount of additional residential housing to the neighborhood. The Applicant explained that, in consultation with neighborhood representatives and organizations, the project was designed to avoid any possible adverse effects by providing parking for each unit and to provide additional outdoor space for each unit in a manner that added to the neighborhood aesthetic. The Applicant stated that the retention of the existing structure was a unique challenge that presented difficulties that could only be overcome by a special architectural design embodied in this project.

10. The project architect, Gregory Kearley, testified that the proposed structure represented an attempt to meet the challenges of the site and maximize the residential

character of the immediate neighborhood. He stated that the structure was designed with a series of setbacks that minimized the visual impact of the addition from the street while providing the maximum amount of light and air for both the residential units and the abutting street. He further testified that the height of the structure was compatible with the neighborhood and that it was specifically compatible with the height of the development immediately across the street to the west.

11. By memorandum dated April 23 and April 25, 2002 and by oral testimony at the April 30, 2002 public hearing, the D.C. Office of Planning stated that the subject application met all zoning requirements and recommended that it be approved. The memorandum noted that the proposed variances to increase the FAR and to address the lot occupancy issue and the special exception request to increase the height of the building meet the requirements of the Zoning Regulations. The Office of Planning further noted that the proposal to provide a mixed use development is a goal envisioned for the area covered by the Reed-Cooke Overlay. The Office of Planning noted the requests for relief would not cause any "substantial detriment to the public good" and "would not substantially impair the intent, purpose or integrity of the zone plan embodied in the Zoning Regulations or Map "because the proposal fulfilled the intent of increasing residential use and the height was mitigated by the setbacks

that allowed light to the street and the units themselves." In its testimony, the Office of Planning noted that the Applicant had met with community representatives and organizations and received their approval and agreed with their various proposals.

12. Darnell Bradford El, Chairman of the Reed-Cooke Neighborhood Association testified that he did not have a position on the application but that he was concerned with the "process". He requested that the matter be continued to allow further review by community residents. Under cross examination, Mr. Bradford El stated that he had not attended any of the previously held meetings between the community and the Applicant. In response, this Board left the record open for the Reed-Cooke Neighborhood Association to provide comments, however no additional comments were received from Mr. Bradford El or the Neighborhood Association.

13. The Board also left the record open for the Applicant to provide a memorandum on whether the height relief requested was a special exception or a variance under the Zoning Regulations. This memorandum was submitted and received in timely manner. Applicant concluded in this memorandum that the relief from the height restrictions of the Zoning Regulations is a special exception under Section 1403 of the Regulations.

14. ANC 1C filed a report in timely manner on the Applicant's proposal. In this report the ANC recommended approval of the application as requested and supported rapid development of the project. The ANC stated that the project was a welcome addition to the neighborhood and in their opinion met the expressed goals of the Reed-Cooke Overlay. The ANC further noted Applicant's efforts to solicit neighborhood comment on the project. The ANC supported the effort to provide additional light, air and outdoor space in the neighborhood.

15. Councilmember Jim Graham, in a letter dated March 8, 2002, urged this Board to approve this application, noting that the application met the expressed goals of the Reed-Cooke Overlay. The Councilmember also stated that the project would enhance the ambiance and reduce heat effects in his recommendation for approval. He noted that the Applicant had incorporated his suggestion for setbacks to avoid the creation of a "canyon" effect on Champlain Street.

16. There was no opposition to the application at the public hearing or in the record. No other persons or parties appeared at the hearing to testify in support of or in opposition to the application.

Findings of Fact:

Based on the evidence of record, the Board finds as follows:

1. The shape of the site, its topography and the existing non-conforming conditions of the structure thereon create "an extraordinary or exceptional situation or condition as to lot occupancy:"

   (a) The site is burdened with an architecturally significant and unique structure of neighborhood value whose continued existence is important to all involved. The property is unique due to an exceptional situation because it was originally developed under the requirements of the then imposed commercial and industrial zones. As a result of re-zoning, the structure became non-conforming in so far as the lot occupancy and FAR requirements of the RC/R-5-B zones.

   (b) Strict application of the Zoning Regulations in this instance would result in peculiar and exceptional practical difficulties for the Applicant. Compliance with the current regulation would require demolition of the existing structure in whole or part thus

destroying the architecturally significant structure. The structure is sound and adds to the variety of architectural styles in the Reed-Cooke area. Applicant's proposed addition does not increase the non-conformity of the structure as to lot occupancy.

(c) The variance requested by the Applicant as to lot occupancy will not cause detriment to the public nor will it impair the zone plan in any way. The retention of the existing building will not impair light and air and Applicant's proposal, through setbacks, will only enhance the public benefits. Full lot occupancy is common in the Reed-Cooke area. Retention of the existing business is consistent with both the Comprehensive Plan and the stated purposes of the Reed-Cooke Overlay.

2. The non-conforming conditions of the site as to building and to FAR require variance relief from the maximum FAR in the R-5-B District and for increasing a non-conforming structure as required under Section 2001.3 of the Zoning Regulations. The existing structure has a FAR of 1.9 and the maximum allowable FAR in the R-5-B District is 1.8. The building became non-conforming as to FAR when the zoning was changed under the Reed-Cooke Overlay. Applicant's proposal to retain the existing structure and uses naturally increases the FAR through the addition of the

residential units.

(a) The subject site is unique because the Applicant's proposal retains the whole of the existing architecturally significant building. This is an extraordinary or exceptional condition that shapes the Applicant's proposal.

(b) Strict application of the Zoning Regulations in this instance would result in the loss of the existing structure thus creating a practical difficulty for the Applicant and imposing an undue hardship for the owners of the existing business. Demolition of the structure would be a loss to the community at large because of the loss of the historic character and elimination of architectural variety in the area.

(c) The requested variances will not be a detriment to the public good because they allow the retention of a building that contributes to the architectural character in the neighborhood. It will also allow the existing retail use to remain and the addition of residential uses in accordance with the stated purpose of the Reed-Cooke Overlay. The proposed increase in FAR allows the Applicant to create additional housing units in a manner that minimizes the visual impact along

Champlain Street by setting back each additional level from the parapet line. This allows additional light to reach the street and the new residential units. This enhances the quality of life in the area without detriment to the public good or impairment of the zone plan.

3. The extraordinary or exceptional condition caused by retention and utilization of the existing structure require variance relief from the height provisions of the regulations.

   (a) The existing building cannot be utilized to provide housing due to its existing lot occupancy and bulk. There is no practical way to provide housing with its required parking without substantially increasing the height of the building by constructing on top of the existing structure.

   (b) The practical difficulties for the Applicant are further increased by the need to provide adequate light for the street and the new units through a series of setbacks. These difficulties are exceptional because lower heights would result in a substantial reduction in the amount of housing produced thus rendering the project impractical.

   (c) The requested height variance will not cause a

detriment to the public good nor will it impair the intent of the zone plan. As stated in the Office of Planning report, the proposed height of this project is consistent with other structures in the area. The provision of additional light and open space through the use of setbacks provide unique aesthetic value to the community and further enhances this project. In addition, Applicant has chosen to utilize one floor of the existing structure to provide additional parking thus alleviating a significant neighborhood concern.

Or In the Alternative:

3. Section 1403 of the Regulations provides that relief from the specific requirements of the Reed-Cooke Overlay District may be granted by the Board if specific criteria are met. The Applicant's proposal meets these criteria in full:

   (a) **The use, building or feature at the proposed site, intensity and location substantially advance the stated purposes of the Reed-Cooke Overlay District**

   The Reed-Cooke Overlay was intended to provide new housing, protect existing housing, maintain appropriate heights and densities, encourage small-scale business development, protect nearby residences and ensure that non-residential uses serve the local

community. The Applicant's proposal is completely compatible with these express purposes. Applicant's proposal provides thirteen new housing units. The height and density of the proposed project is, due to topography and existing structures compatible with the heights and densities of other buildings and developments in the immediate area. The proposal also provides for retention of the Brass Knob, a long serving local business that provides for the needs of housing renovators in the immediate area. The project will be developed by a local construction company which employs local residents and thus addresses the employment needs of the local communities. The project is designed to be self-sufficient in construction staging, thus protecting local residences from any undue harm or adverse impacts.

(b) **Vehicular egress and access is designed to minimize pedestrian conflict and creates no objectionable traffic conditions**

The proposed project will utilize the existing rear entrance to the building as its primary means of parking access. thus there will be no interference with pedestrian traffic. Only thirteen cars will utilize the garage space and will have no appreciable effect on traffic conditions in the area. The alley way ensures that most traffic will not utilize Champlain Street as

egress to the site.

(c) **Adequate Off-Street Parking is Provided for the Users**

One parking space is provided for each new housing unit created by this project. There is existing parking for the use of the Brass Knob. Most customers, however, arrive by foot as is typical for a truly local retail business.

(d) **There is no noise associated with the operation of the proposed uses that will adversely affect the neighbors**

The existing structure was built as an automotive garage and has brick and masonry walls surrounding concrete slabs. No particular noise will be generated by the retail or housing uses that would adversely affect the quality of life in the neighborhood. Construction of the addition will be in accordance with applicable law and regulation and will not produce any adverse effect. Construction will occur primarily within the existing structure, thus minimizing most associated noise.

(e) **There is no associated storage of materials, or**

outdoor processing, fabricating, or repair associated with the project

As previously stated, the bulk of the construction will occur within the building. There is no outdoor processing or storage associated with the existing retail use or planned housing units.

(f) **The use, building, or features of the proposed project will not adversely affect adjacent property nor will it be detrimental to the public health, safety or welfare**

This project is designed to complement the Reed-Cooke neighborhood by increasing the available housing stock without detracting from that already available. Applicant has worked hard to contact its neighbors and incorporate their views and concerns into the design of the project. ANC 1C has voted unanimously to support this application at its public forum on April 16, 2002. It is inherent in the nature of the project that it will produce no detrimental or otherwise adverse effects in its own environs. For these reasons, this proposal qualifies for the grant of the requested special exception.

Conclusions of Law and Opinion

Based on the evidence of record, the Board concludes that the Applicant is seeking area variances to allow an increase in the floor area requirements under Section 402, to allow continued non-conforming lot occupancy under Section 403 and allow an increase to the non-conforming structure under Section 2001.3 of the Regulations. The Board further concludes that the Applicant is seeking a special exception to exceed the height provisions of the Reed-Cooke Overlay District under Section 1403 of the Regulations.

Granting such variances requires a showing through substantial evidence of a practical difficulty upon the Applicant arising out of some unique or exceptional condition of the property such as exceptional narrowness, shape or topographical condition. The Board must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the Applicant has met the burden of proof in this application. The Applicant has submitted evidence that demonstrates a unique, extraordinary and exceptional condition in the existing non-conforming structure that creates a practical difficulty for the Applicant in further developing the property.

The Board further concludes that increase in FAR, height, and lot occupancy to produce additional housing and retain the existing retail business will be accomplished through this proposal without substantial detriment to the public good.

The Board further concludes that the requested variances may be granted without substantially impairing the intent, purpose and integrity of the zone plan for the RC/R-5-B District.

Finally, the Board concludes that the Applicant has fully addressed and met the criteria for an increase in height as a special exception under Section 1403 of the Zoning Regulations as shown in the Findings of Fact.

In light of the foregoing it is hereby ordered that the application is **granted**.

Vote:

By Order of the D.C. Board of Zoning Adjustment

Attested by: _____

Jerilee Kress
Director

Final Date of Order: _____