Government of the District of Columbia

OFFICE OF ZONING

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MEMORANDUM

TO: Board of Zoning Adjustment

THRU: Jerrily R. Kress, FAIA
Director

FROM: Richard S. Nero, Jr. RSN
Special Assistant

DATE: July 30, 2002

RE: **Application No. 16869 of Kings 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 nonconforming 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 existing retail) development in the RC/R-5-B District at premises 2329 Champlain Street, N.W. (Square 2563, Lot 103).

On April 30, 2002, the Board approved the above-cited application, which included approval of a special exception to allow an increase in building height under section 1403 of the Reed-Cooke Overlay District. It has subsequently been determined, following consultation with the Office of the Corporation Counsel, that the requested relief from the height requirements should have been considered as a variance from the maximum matter-of-right height provisions of the underlying R-5-B District instead of a special exception.

Buildings in an R-5-B District may be built up to 50 feet as a matter of right. The Reed-Cooke Overlay restricts building heights in an R-5-B District to 40 feet. Section 1403 (Exceptions) of the Reed-Cooke Overlay allows the Board to grant a special exception from the height requirements of the overlay. By implication, a special exception cannot be approved for a height that exceeds the matter of right limit in the underlying R-5-B district. To find otherwise would, in effect, make the overlay less restrictive than the underlying district, which, as the Board is already aware, is not in keeping with the intent of the overlay. The applicant's proposed building would be over

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69 feet, well over the 50-foot height limits for the R-5-B District. Therefore, a variance from the height requirement is required for the applicant's proposed project.

The Office of Zoning requests that the Board, on its own motion, reopen the record to reconsider the height of the building as a height variance pursuant to 11 DCMR §§ 3103.2 and 400. If the Board decides to reconsider the application, the OZ suggests the applicant supplement the record with arguments in support of the variance from the height requirements or that a rehearing is scheduled. The Board could then vote on the variance at its public meeting in September, 2002, or re-hear case, limited to the height variance, on October 15, 2002.