GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16911-A of Brandywine Street Association, pursuant to 11 DCMR §3104.1 for a special exception under § 205 for a child development center and a special exception under § 334 for a community service center, and pursuant to 11 DCMR § 3103.2, a variance from the floor area ratio requirements under section 402, a variance from the lot occupancy requirements under § 403, a variance from the open court requirements under section 405, and a variance from the off-street parking requirements under section 2101, to convert and expand an apartment building into a community service and child development center in the R-5-A District at premises 700 Brandywine Street, S.E. (Square 6163, Lot 125).

HEARING DATE: September 17, 2002
DECISION DATE(S): September 17, 2002 (Bench Decision), October 15, 2002 (On Reconsideration)

MODIFICATION OF ORDER AFTER RECONSIDERATION

On September 17, 2002, the Board of Zoning Adjustment held a public hearing on the application of the Brandywine Street Association for the zoning relief outlined above. No persons or entities appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Advisory Neighborhood Commission (ANC) 8E, which is automatically a party, did not submit a report on this application. At the hearing, the applicant, its architect, its funding manager, and a neighbor testified in support of the application. Based upon the record before the Board, including letters of support from the District of Columbia Departments of Health and Transportation, and after having given great weight to the report of the District of Columbia Office of Planning (OP), the Board granted all the zoning relief requested by the applicant, subject to five conditions. The first of these conditions limited the time period of the Board's special exception approval to three years, commencing upon the issuance of the certificate of occupancy.

The Board's Summary Order became final on October 1, 2002, when it was filed and served upon the applicant and the ANC. Later that same day, the applicant filed a Motion for Reconsideration of the three-year time limit imposed by the Board's first condition. In the Motion for Reconsideration, (Motion), the applicant argues that no harm will result from elimination of the time limitation, because there was no opposition to the application and no evidence presented of adverse or objectionable conditions. Further, the Motion argues that the applicant's financing for the child development and community center will be jeopardized by the time limitation. The Motion states that the applicant is hoping to secure funds from the Department of Housing and Urban Development under the Community Development Block Grant ("CDBG") program. The applicant claims that it will likely not receive CDBG funds if it cannot show "more than a short-term effect," and that because these funds are granted on a

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competitive basis, the applicant's rating vis-a-vis other competitors for such funding will be greatly handicapped by the time limitation.

At the October 15th Special Public Meeting, the Board granted the applicant reconsideration on the issue of the time limitation. The Board then heard testimony and received further information from the applicant's attorney and funding manager concerning the potential loss of the CDBG funds and the detrimental effect it would have on the applicant's project. The applicant's representatives requested no time limitation, but stated that if the Board chose to impose one, ten or fifteen years would be a more workable timeframe. The Board thereafter voted 4-1-0 to modify condition 1 of its final order so as to increase the time period of the special exception approval to ten years.

While the Board is supportive of the applicant's project, the Board finds that due to the start-up nature of the applicant's operation and the potential for unforeseen adverse impacts, it is necessary to retain a time limit in the order. For this reason, the Board rejects the contention of the applicant that the Board should not impose a time limit for this use when there is no opposition to the application. The absence of parties in opposition does not guarantee the absence of adverse impacts.

The imposition of a time limitation on this special exception does not mean that the applicant will go out of business at the end of ten years. Rather, the applicant may seek the renewal of the special exception before its expiration. Assuming that the actual operation of the community service center is free of adverse impacts and the applicant has adhered to the Board's other stated conditions, the applicant should encounter little difficulty in obtaining a second approval.. In essence, the Board is looking for and expecting the applicant to maintain a good track record.

After balancing the need for a time limitation with its potential effect on the applicant's ability to obtain CDBG funding, the Board believes it appropriate to increase the time limit on the applicant's grant of zoning relief to a period of ten (10) years.

It is therefore **ORDERED** that the Board's Summary Order in Application No. 16911 of Brandywine Street Association, dated October 1, 2002, is hereby modified in that the first of the five conditions enumerated at pages 2-3 of that Summary Order is to read as follows:

1. Approval shall be for **TEN (10) YEARS**, commencing upon issuance of the Certificate of Occupancy.

The October 1, 2002 Summary Order is to remain in effect and unchanged in all other respects.

VOTE: **4-1-0** (Geoffrey H. Griffis, David A. Zaidain, James H. Hannaham and Curtis L. Etherly to approve; Anne M. Renshaw to deny)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this Order.

ATTESTED BY: Jerrily Kress

JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: NOV - 8 2002

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 IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16911-A

As Director of the Office of Zoning, I hereby certify and attest that on NOV - 8 2002 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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rsn

ATTESTED BY: Jerrily Kress
JERRILY R. KRESS, FAIA
Director, Office of Zoning