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BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF
JEMAL'S WHEEL, L.L.C.
1701 KALORAMA ROAD, N.W.

BZA APPLICATION NO. 16924
HEARING DATE: DEC. 10, 2002
ANC 1C

STATEMENT IN OPPOSITION IN PART AND SUPPORT IN PART

I. INTRODUCTION AND BACKGROUND

On behalf of the Reed-Cooke Neighborhood Association ("RCNA"), this statement is submitted in partial support and in partial opposition to Jemal's Wheel, L.L.C.'s ("Applicant") application for variances and special exceptions relating to the property at 1701 Kalorama Road, NW. The Applicant seeks to add three stories to an existing warehouse to create a new fifty-four unit residential building (the "project.") In order to build the project as proposed, the Applicant must obtain six variances and special exceptions from the District of Columbia Board of Zoning Adjustment ("Board") pursuant to 11 D.C.M.R. sections 1403, 3103.2 and 3104.1.

The RCNA is conditionally in support of four of the six requests. If the project were developed within the matter-of-right height limits established in the Reed-Cooke Overlay, the RCNA would not oppose the requests for the following exceptions: (1) a variance from the lot occupancy requirement of section 772; (2); a variance from the residential recreation space dimensional requirement of section 773.7; (3) a variance from the parking drive aisle width requirements under section 2117; and (4) a special exception from the roof structure requirements of section 411.

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Board of Zoning Adjustment
District of Columbia
CASE NO.16924
EXHIBIT NO.58

The RCNA strongly opposes the Applicant's request for relief to exceed the matter-of-right height limits of section 1402 of the D.C.M.R. and the request for a variance from the loading berth requirements of section 2201.

II. ARGUMENT: HEIGHT LIMITATIONS

The RCNA strongly opposes the Applicant's request for a special exception from the maximum permitted height requirements under section 1403.1. As a preliminary matter, the RCNA believes that the Applicant has improperly requested relief from the height requirements of Chapter 14 by asking for a special exception under section 1403.1. The proper form of relief when one seeks to exceed the height limitations stated in section 1402.1 of the Reed-Cooke Overlay is a variance, pursuant to section 3103.2. Furthermore, the Applicant has failed to meet the burden of demonstrating the requisite need to warrant the granting of a variance. Finally, even assuming that the proper form of relief is a special exception, the Applicant has also failed to demonstrate that the project meets the necessary criteria for granting a special exception.

A. A Variance is the Necessary Form of Relief for the Applicant's Proposal.

At the October 8, 2002 public hearing in which this case was postponed to December 10, 2002, the Board expressed concerns as to whether the proper form of relief needed to exceed the height limitations of the Reed-Cooke Overlay is a special exception or a variance. The RCNA believes that the correct interpretation of Chapter 14 of the D.C.M.R. indicates that in the Reed-Cooke District an applicant may build to: (1) forty-feet as a matter of right; or (2) fifty-feet with the granting of a special exception. Any construction greater than fifty-feet would require a variance, if permissible at all.

The Applicant has asked for a special exception under 11 D.C.M.R. § 1403.1 to exceed the matter-of-right height limit imposed by section 1402.1 of the Reed-Cooke Overlay. When one reads Chapter 14 of the DCMR as a whole, the plain language indicates the purpose of section 1403.1 is to supplement rather than supplant section 1402.1. Section 1403.1 adds certain additional criteria that must be met in order to obtain a special exception from the requirements of Chapter 14. Thus, to be granted a special exception from the Board, an applicant must meet the conditions of section 1402.1 *and* 1403.1. A special exception to exceed fifty-feet is not even contemplated in this chapter. Section 1403.1 states "An exception from this chapter shall be permitted only if granted by the Board of Zoning Adjustment as a special exception *pursuant to § 3104*." Section 3104.1 then enumerates the different types of special exceptions that may be granted pursuant to section 3104. Nowhere does it indicate that a special exception from the height requirements is available. The Applicant further contends that section 1403.1 permits construction to the underlying zoning limit. Even if this were the case, section 1400.4 states " [w]here there are conflicts between this chapter and the underlying zoning district, the more restrictive regulations shall govern." Hence, the limitations of section 1402 shall take precedence in the present situation.

Under section 1402.1 the maximum height permitted in the Reed-Cooke Overlay District shall be forty-feet. However, the Board may permit a maximum height of fifty-feet by granting an Applicant a special exception, so long as the Board determines the project provides the required number of low and moderate income housing units. Thus, under section 1402.1 a developer may construct a building of forty-feet in height as a matter-of-right, and to a maximum of fifty-feet with the approval of the Board under a special exception. Any construction above

fifty-feet would require a variance. This is the same position articulated by the Zoning Commission member present at the October 8, 2002 hearing in this case.[1]

The Applicant has argued that section 1403.1 permits it to proceed outside the requirements of section 1402.1. It contends section 1403.1 permits the board to grant a special exception allowing non-compliance with any provision of Chapter 14 of the D.C.M.R., including section 1402.1. A special exception granted under section 1402.1 would limit the maximum height of any development to fifty-feet. It would also require a set number of affordable housing units to be included in the project. Yet, according to the applicant's reading, a special exception granted under section 1403.1 would not only permit construction to sixty-five feet, it would eliminate any requirement to include affordable housing. *See Statement of Applicant* at 16-17. If section 1403.1 were to be interpreted this way, it would effectively render the height regulations articulated in section 1402.1 meaningless. Under such an interpretation there is hardly a scenario imaginable in which someone would seek a special exception under section 1402.1.

Furthermore, the Applicant has argued that a variance is not required because (1) a special exception under section 1403.1 would permit the height of the proposed project to be governed by the underlying zone district (C-2-B) rather than the regulations of the Reed-Cooke Overlay, and (2) the proposed height is in compliance with the underlying zoning.[2] This interpretation is contrary to the plain language of Chapter 14 of the D.C.M.R. Section 1400.4 states, "where there are conflicts between this chapter and the underlying zoning district, the more restrictive regulation shall govern." For the purpose of regulating height, section 1402.1 is more restrictive than section 770.1, therefore it governs the present situation.

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[1] See p.10 of the October 8, 2002 Transcript, "CHAIRPERSON GRIFFIS: 'So your point, Ms. Mitten, would be that the Reed-Cooke outlines the special exception up to 50 feet and beyond that 50 feet would actually be a variance to the overlay.' MS. MITTEN: 'YES.'"

[2] The underlying zone permits a maximum height of sixty-five feet, 11 DCMR § 770.1, while the Reed-Cooke overlay limits the maximum height to forty-feet as a matter-of-right.

In *Board of Zoning Adjustment Case No. 16869, 49 D.C. Reg. 9224* (Oct. 4, 2002), King's Creek, LLC requested a special exception to exceed the forty-foot matter-of-right height limit in the Reed-Cooke Overlay in order to build a sixty-nine-foot structure. The board found that a variance rather than a special exception was the necessary form of relief. Although the reason a variance was required in that particular case was actually because the applicant's square was not subject to the Reed-Cooke Overlay, the Board took special care to note that a special exception to build higher than fifty-feet in the Reed-Cooke district is not provided for under the regulations:

> An applicant may apply for a special exception to exceed the requirements of the Reed-Cooke overlay...only up to the matter of right limits [fifty-feet.] To allow otherwise would allow the overlay to create a less stringent height requirement by offering a special exception where a variance is otherwise required, which was plainly not the Zoning Commission's intent when it established the overlay. See 11 D.C.M.R. §1400.4, (when there is a conflict between the overlay and the underlying zone, the more restrictive requirements apply.) *See Kings Creek, LLC,* at 3.

Finally, the Reed-Cooke Overlay was created in part to restrict the height and density of future development in the Reed-Cooke district.[3] If the Overlay were to be interpreted as the Applicant has suggested, it would create a lower standard for developers wishing to exceed the matter-of-right limits within the Reed-Cooke district, than would exist in the absence of the Overlay. Where one of the stated purposes of the title is to limit heights and densities, it would be illogical to conclude that the same title would create a provision making it easier to exceed the very height limitations the title creates. Thus, the Board should conclude that the necessary form of relief in this case must be a variance.

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[3] 11 D.C.M.R. § 1400.2 (b)

B. The Applicant Should Not Be Granted A Variance for Height and Bulk.

The Applicant has failed to meet the required burden of demonstrating that compliance with the zoning regulations is unduly burdensome, and therefore should not be granted an area variance to exceed the height limits imposed by the zoning regulations. The applicable provision states:

> Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of **exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property**, the strict application of any regulation, adopted under D.C. Code Ann. §§5-413 to 5-432 (1981) would result in **peculiar and exceptional practical difficulties** . . . upon the owner of the property, to authorize, upon appeal, relating to the property, a variance from the strict application so as to relieve the difficulties; Provided, that the relief can be granted without **substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan** as embodied in the Zoning Regulations and Map. *See* 11 D.C.M.R. § 3103.2, D.C. CODE ANN. § 6-641.07(g)(3) (2001).

In *Capital Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939, 941 (D.C. 1987), the court restates the above mentioned statute as a three part test, in which the applicant has the burden of meeting all three prongs before a variance can be granted. First, an applicant must show the property is unique; second, an applicant must show that strict application of the zoning regulations will cause exceptional practical difficulties to the applicant; and third, an applicant must demonstrate that granting the variance will neither do harm to the public good nor impair the intent, purpose, and integrity of the zone plan. Applicant fails to meet the requirements of all three prongs of this test.

1. The Property is Not Unique to the Reed-Cooke Neighborhood.

There is no extraordinary or exceptional condition of the 1701 Kalorama property within the meaning of the statute to warrant the granting of a variance. The property is not so exceptionally narrow, shallow, or does it have any exceptional topographical conditions, which

would make strict adherence to the zoning regulations unduly burdensome. Furthermore, it is the burden of the Applicant to demonstrate that the particular problems associated with the piece of property in question are unique to the land or structure of the property, and that these unique characteristics are "not shared by other propert[ies] in the neighborhood." *Russell v. Board of Zoning Adjustment*, 402 A.2d 1231, 1235 (D.C. 1979). The Applicant has failed to adequately demonstrate the uniqueness of the 1701 Kalorama property. The subject property is similar in most respects to most of the other properties in the immediate area. Any topographical encumbrances that exist upon the Applicant's property are shared by other properties in the neighborhood.

According to *Capital Hill Restoration Society*, the purpose of the uniqueness requirement was to ensure the integrity of the zoning regulations by requiring that a property is not only unique, but is unique to the entire neighborhood. 534 A.2d at 941-42 (indicating that if difficulties affected the entire neighborhood, the proper form of relief would be an amendment to the zoning regulation, rather than a variance or special exception). In that case, the subject property was not found to be unique. Although the property was an unusually large piece of property, it was not atypical for the neighborhood, and therefore not unique. *See id.* at 942 (denying a variance because if granted, every piece of property in the neighborhood would also require a variance as well).

The Applicant's Statement claims several unique conditions that give rise to an exceptional situation, only one of which is related to the need for a height variance. The Applicant asserts the elevation difference of the property from the southern end to the northern end makes the property unique. *See Statement of Applicant* at 5-6. However, this feature is by no means unique to the area. The entire Reed-Cooke Neighborhood sits on the side of a hill. In

fact, the Applicant even notes that property is located at the "bottom of a bowl." *See id.* at 14. Granting a height variance in the Reed-Cooke neighborhood, where the cited unique characteristic of the property is that it slopes from one end to the other, would amount to a de-facto amendment to the zoning regulations, since nearly all of the properties in the neighborhood would be able to make the same claim.

2. Applicant Failed to Demonstrate Exceptional Practical Difficulties.

In order to obtain an area variance, Applicant is required to prove that exceptional practical difficulties would exist if it were required to strictly comply with the zoning regulations. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 540-42 (1972). This definition has been refined, requiring two conditions to be met: (1) compliance with the area restriction would be unnecessarily burdensome; and (2) practical difficulties are unique to the particular property. *See Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1169 (D.C. 1990) (citations omitted).

Economic use of a property has been considered a factor in determining what constitutes a practical difficulty in variance cases. However, when other feasible alternatives exist that comply with the regulations, economic feasibility is not sufficient to warrant the granting of a variance. In *Barbour v. District of Columbia Board of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976), the Court of Appeals affirmed the Board's denial of an area variance application from certain side yard requirements. The fact that the available alternative methods that did not necessitate a variance were less economically feasible was held insufficient to meet the burden necessary to warrant granting of a variance.

Economic use should only be considered determinative where there are no feasible alternatives. In *Assoc. for Preservation of 1700 Block of N Street v. District of Columbia Board*

of Zoning Adjustment, 384 A.2d 674, 678 (D.C. 1978), the Court of Appeals upheld the granting of an area variance from off-street parking requirements to the YMCA. In that case, if the normal number of parking spaces were included, the YMCA would not have been able to provide all of its programs because the cost of parking spaces would have been prohibitive. However, there was no feasible substitute that would have complied with the regulations. Conversely, in *Barbour*, there were alternate designs available that would have been in compliance with the regulations. The fact that the alternative designs would have caused a consequent loss in backyard size or interior space in the rest of the house was not sufficient to warrant the granting of a variance. 358 A.2d. at 327. Thus, *Barbour* suggests that a substantial increase in cost of an intended improvement, coupled with some loss in overall utility of the property is not a practical difficulty that merits an area variance. *See id., see also Myrick v. District of Columbia Board of Zoning Adjustment*, 577 A.2d 757, 761-62 (D.C. 1990) (stating that the cost of renovation was insufficient to justify area variance were expansion of a living space could be achieved in accordance with the area regulations).

The Applicant has failed to demonstrate that the strict application of the zoning regulations would result in exceptional practical difficulties. The only practical difficulty cited by the Applicant in support of a height variance is that without a height variance the project would not be economically feasible. The Applicant claims a critical mass of units must be incorporated in the project for it to be economically viable. This assertion is supported by the financial feasibility analysis undertaken by Bolan Smart Associates, Inc. However, as stated above, it has been repeatedly held that financial difficulty alone is not sufficient to warrant granting of a variance. *See e.g., Barbour v. District of Columbia Board of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976), *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 542 (D.C.

1972) (stating that a "variance cannot be granted where property conforming to the regulations will product a reasonable income but, if put another use, will yield a greater return."). Furthermore, the Bolan Smart report is nowhere near sufficient to demonstrate that the property could not be used productively without the requested variance.

The facts of the present case are nearly identical to those of *Barbour*. Here the Applicant has proposed a plan that would be more economically viable than a plan that adheres to the zoning regulations. However, as in Barbour, there are other alternative designs that would also be economically feasible. The fact that the alternative plans may not be as economically feasible as the proposed plan does not warrant the granting of a variance. When there are other viable uses for the property that comply with the regulations a variance becomes unnecessary.

The Applicant's own economic feasibility study demonstrates that there are other economically viable options for the property at 1701 Kalorama Road. That study claims, "[i]f the property were simply rehabilitated, and leased for flex-industrial use, it would generate a pre-tax profit to the owner of an estimated $689,688." *Statement of the Applicant* at Tab G, Bolan Smart Report at 1. Since the report shows there are other viable economic uses for the property, which comply with the zoning regulations, the Applicant fails to demonstrate there is no feasible substitute for the proposed project. Thus, the economic hardship alleged by the applicant does not amount to a practical difficulty in accordance with the applicable law.

Even if the analysis is limited to the economic viability of a residential project, the Bolan Smart analysis is insufficient to conclusively demonstrate that a matter-of-right use of the project would be financially unfeasible. The report concludes the project as proposed will result in a pre-tax profit of $692,758, while a theoretical "by-right" 42-unit project would result in a pre-tax loss of $8,053. This conclusion should not be given any weight, for it is based on incorrect math,

fundamental flaws in design, and too many unsupported assumptions to be considered credible. *See* Attachment A (analyzing the Bolan Smart report).

First, the report contains critical mathematical errors. A close look at the calculations reveals that the calculated income is incorrect for all three tables. For example, in calculating the profitability of the theoretical 42-unit apartment building, the Bolan Smart report miscalculates the total income attributable to rent. The first line of the income section of table three reads "53,802 SF x 85% = 45,732 SF @ $2.50/SF = $1,143,300. However, 45,732 SF @ $2.50/SF actually only equals $114,330, thus the report is off by a magnitude of order. Apparently the Bolan Smart report was attempting to convert the monthly rental income generated by the project into a yearly total. However, it improperly multiplies the monthly subtotal by ten months, rather than the twelve months that are in a year. The correct total income generated by the 42-unit theoretical project is actually $1,371,960. By not multiplying the monthly income by the correct number of months the report fails to account for $228,660 of additional income. This error results in incorrect statement of the total profitability of the project, and ultimately leads to the wrong conclusion.

Additionally, when comparing one proposal to another it is important to keep the assumptions consistent, so that the reader can compare "apples to apples." In the Bolan Smart report, some of the assumptions change from one proposed project to another without any explanation. For example, Mr. Bolan assumes an operating and tax cost of 38% for the matter-of-right project, yet assumes only a 35% operating and tax cost for the proposal requiring a variance. This change in rate is neither supported nor explained. Had the same 35% number that was used for the option requiring a variance been used for calculating the profitability of the matter-of-right option, it would result in an approximate $32,000 increase in profit. Again, this

results in an incorrect statement of the total profitability of the project, and ultimately leads to the wrong conclusion.

Furthermore, by not considering the complete tax implications of the project, the Bolan Smart analysis should be considered fundamentally flawed. For tax purpose an apartment building is considered a depreciable asset. When analyzing the value of a depreciable asset it is imperative to factor in the tax consequences. A property held for the production of income creates a depreciation deduction for the holder. *See* 26 U.S.C. §167 (2002). In the case of a residential rental property, the depreciation deduction is equal to the owner's basis in the property divided by 27.5. *See* 26 U.S.C. §168 (2002). Using the numbers provided in the Bolan Smart report, the 42-unit proposal would permit the Applicant to deduct $307,284 from its federal income tax. Depending on the Applicant's tax bracket, this would result in an after tax gain of approximately $107,000.

Also, the report improperly uses the assessed value of the building when calculating the total cost of the project. This number is not an accurate indicator of cost. A proper assessment of the total cost of the building would incorporate the actual price Jemal's Wheel, LLC paid for the building, rather the post-facto assessment. A Lexis-Nexis search revealed that the Applicant purchased the building on October 17, 1997 for only $750,000. *See* Attachment B. Thus, using the assessed value of the building ($1,624,270) inflates the total cost of the project by $874,270. Again, this results in incorrect statement of the total profitability of the project, and ultimately leads to the wrong conclusion.

Moreover, the report is based on numerous assumptions that are not sufficiently supported with evidence. For example, nowhere in the report does it state how the income per square foot rates were determined, why the analyst chose the CAP rates that were used, or why

the building costs are calculated at what they are. In fact, not a single number in the report is justified with supporting evidence. Without demonstrating whether the chosen assumptions are industry standards, current market values, or just plain guesses, the report lacks the necessary support one would expect from an expert report.

Finally, in discussions with the community, the Applicant has stated that it has yet to determine the disposition of the building upon completion of the project. The Bolan Smart report imagines three scenarios in which the Applicant would retain ownership of the property. However, this is not a representative list of options. The Applicant has failed to demonstrate the economic consequences of developing anything but studio style apartments, nor has he shown that selling the building either as a whole, or as condominium units upon completion is economically unviable. Without considering any of these other options, the Applicant has not established that the building would not be economically viable if constrained to the zoning regulations. Thus, the Applicant's assertion that without a variance the project would not be economically viable is unsubstantiated, and does not represent a practical difficulty under the law.

3. Applicant Has Not Demonstrated That Its Project Will Not Cause Substantial Detriment to the Community or Harm to the Public Good.

The third prong of the variance test requires the Applicant prove that the variance will not cause a substantial detriment to the public good nor substantially impair the intent, purpose, and integrity of the zoning plan. A variance to exceed the height limits imposed by the Reed-Cooke Overlay will both have a substantial detriment to the resident of the Reed-Cooke neighborhood, and will significantly impair the intent and purpose of the zoning plan.

a. *A Variance Will Cause Substantial Detriment to the Reed-Cooke Neighborhood.*

The residents of the Reed-Cooke neighborhood have come to enjoy a quiet, intimate community atmosphere with a view of the Washington, DC skyline. This quiet, peaceful style of life is being jeopardized by the proliferation of recent expansion in the area. For the health of the Reed-Cooke neighborhood and the integrity of the Reed-Cooke Overlay, development must be restricted to the matter of right limit whenever possible. The RCNA feels the proposed project will add more stress to the neighborhood than the area was zoned to handle. Through increased traffic, a reduction in available parking, and by disrupting the scenic views of many residents in the neighborhood, this project will without a doubt be substantially detrimental to the public good.

Anyone who has been to the Adams Morgan area recently understands that parking is a huge problem. If the project is constructed as proposed, the problem will only get worse. As it is now, it is nearly impossible to find parking after 7:00 p.m. in the Reed-Cooke neighborhood. The Applicant's own traffic study illustrates this point. According to the report, parking usage ranged from a low of 85% capacity in the middle of the day when most residents are at work, to nearly 100% on early Friday evenings. As astounding as these numbers are, the report fails to account for the periods when the parking problem is at its greatest. The parking usage peaks in the early evenings and weekends. This is when the most residents are at home and the number of guests visiting is at a maximum. Additionally, while the report does purport to take into account three other projects that are going on in the area, it fails to incorporate many others. For example, across the street at 1631 Kalorama Rd. a new auction house is scheduled to open next year. This project alone has the potential to attract hundreds of cars on any given weekend. Also, according

to the Office of Planning,[4] a 166-unit project with an entrance on 17th Street is being developed at 2480 16th Street. There is another project across the street at 1700 Kalorama Road that will be adding 32-units as a matter-of-right. Furthermore, there are also by-right projects at 2357 and 2363 Champlain Street, consisting of 8 and 31 units respectively. The bottom line is that there is an existing parking problem coupled with a huge influx of new matter of right development going on in the Reed-Cooke District. Granting a variance that would exasperate the problem would be substantially detrimental to the public good.

The same concerns regarding parking should also be considered in analyzing the traffic problem. This proliferation of matter-of-right development will add hundreds of new residents to the Reed-Cooke neighborhood. Many of these new residents will have cars, even those who do not have cars will have guest who will visit via car. The addition of all these cars to the neighborhood will clog up the area roadways. Added traffic and reduced parking is more than just an inconvenience; it creates a dangerous nuisance for the many pedestrians and drivers in the neighborhood. Plus, with more traffic comes undesirable additional noise. It should also be noted that a reduction in parking adds to the immediate traffic problem, since more cars will be "circling" looking for a spot.

b. *A Variance Will Significantly Impair the Intent and Integrity of the Reed-Cooke Overlay.*

Granting a height variance would be detrimental to the integrity of the zoning regulations. In late 1980's and early 1990's the RCNA fought long and hard to establish the Reed-Cooke Overlay. Then, organized under acronym RAM, the RCNA worked with the Office of Planning, the Zoning Commission, and the Mayor's office to create a vision for the future of the Reed-Cooke neighborhood. This vision was codified in Chapter 14 of the DCMR as the Reed-Cooke

[4] See Attachment C.

Overlay. It was designed to protect current housing in the area, provide for the development of new housing *while* maintaining heights and densities at appropriate levels, and protecting nearby residences from damaging traffic, parking, environmental, social and aesthetic impacts. Notwithstanding Planned Unit Development's, which are not subject to the strict height restraints of the Overlay, the RNCA is unaware that the Board has approved a height variance from the regulation since its creation in 1991. The property in question is perfectly viable being used in a matter-of-right fashion, so there is no need to set a precedent that would erode the integrity of the Reed-Cooke Overlay.

As homeowners in the Reed-Cooke Overlay District, many members of the RCNA attribute a percentage of the value of their homes to being able to rely on the integrity of the zoning laws. Members of the RCNA have purchased property in the area with the understanding that the municipal regulations in existence would be enforced. When developers are permitted to come into the neighborhood and design a project without having to adhere to the zoning regulations as they are written, the integrity and purpose of the regulations begin to erode.

Furthermore as stated above, if the applicant were permitted to obtain a special exception under section 1403.1, without heeding the requirements of section 1402.1, section 1402 would be rendered meaningless. *See supra* Part II, A, at 4. Such an interpretation would greatly impair the integrity of the Reed-Cooke Overlay.

While the Applicant has argued that by providing for the development of new housing, it is furthering the purpose of the Overlay, this is just one of the several stated purposes of the Reed-Cooke overlay. The Applicant's interpretation ignores the surrounding language of the statute, which requires that even during the development of new housing other factors must be taken into account and regulated; such as, protecting current housing, maintaining heights and

densities, and protecting the community residents from damaging traffic, parking, and environmental, social, and aesthetical impacts. In this case, the Applicant can meet all of the stated purposes by building an apartment building that adheres to the matter-of-right limitations. We believe the opportunity exists to develop the property in a manner that would advance all the purposes of the Overlay. Thus, the residents of the Reed-Cooke neighborhood ask the Board to deny the request for a height variance, since it will have a detrimental impact on the neighborhood while only addressing one of the numerous stated purposes of the Overlay.

C. Even Assuming Special Exception is the Required Form of Relief, Applicant Fails to Meet Burden of Proving A Special Exception is Warranted in Height.

As stated previously in this brief the RCNA believes that a variance rather than a special exception is necessary to exceed the height limitations of the Reed-Cooke Overlay. However, if a special exception is determined to permit the Applicant to exceed the height limits of section 1402.1, the RCNA believes any special exception is subject to both the criteria set forth in section 1402.1, as well as the criteria stated in 1403.1. Assuming the Applicant only requires a special exception in order to build to the height of fifty-seven-feet, Jemal's Wheel still fails to meet the burden of proving an exception is should be permitted.

1. Applicant Does Not Meet the Requirements of 1402.1.

Section 1402.1 states:

> [t]he maximum height permitted in the Reed-Cooke Overlay District shall not exceed forty feet . . . . Provided, that in the RC/C-2-B District the [Board] may approve a maximum height of fifty feet . . . subject to the determination by the Board that the project will provide for the on-site construction or substantial rehabilitation of low and moderate income housing units . . . of a total gross floor area equal to fifty percent of the additional gross floor area made possible by this exception.

The Applicant has asked for a special exception that would permit construction seventeen feet above the forty-foot height limit of the Reed-Cooke Overlay. According to the architectural drawings, the special exception the Applicant has applied for would permit the construction of two additional floors. In keeping with the provision of section 1402.1, the Applicant must dedicate half of the additional gross floor area made possible by this exception to low and moderate income housing units. Thus, if the exception were granted, the equivalent of one entire floor, or thirteen units, needs to be devoted to low and moderate income housing. The proposal the Applicant has submitted only calls for four units to be devoted to low and moderate income housing. Thus it falls far short of meeting the requirements necessary for the Board to approve a special exception under section 1402.1

The Applicant claims that it is not required to dedicate any space to low and moderate income housing, since it is asking for a special exception under section 1403.1, which does not mention affordable housing. However, section 1403.1 does not permit an exception to exceed the height limits of section 1402.1. Any exception granted under section 1403.1 must be pursuant to section 3104, which does not provide an exception to exceed the height limits established in section 1402.1, therefore making the Applicant's argument irrational.

2. Applicant Does Not Meet the Requirements of 1403.1.

Even if Applicant would be able to build to fifty-seven feet with a special exception under 1403.1, Applicant fails to the demonstrate the required criteria of 1403.1(a) through 1403.1(g). Applicant argues that the special exception should be granted because the project needs a "certain critical mass of units" to be "economically viable." *Statement of Applicant* at 12-13. Economic feasibility is not grounds for granting a special exception as Section 1403.1

does not contemplate economic feasibility. Even so, applicant has failed to argue that economic feasibility requires a special exception or a variance. *See supra* Part II, B, 2.

Section 1403.1(a) requires that the use of the building substantially advance the purposes of the Reed-Cooke Overlay. Applicant argues that providing "new housing" is one of the purposes of the Overlay. However, as discussed above, this argument fails to account for the other provisions of the Overlay and in the context of the whole. The Reed-Cooke Overlay was created to encourage new housing while maintaining heights and bulks at appropriate levels and protecting the community from increasingly congested streets.

Section 1403.1(b) requires that vehicular access to the property must not conflict with the pedestrian walkways, must not create dangerous traffic conditions, and must function efficiently. Applicant argues that because the proposed project is an apartment building, there will be less pedestrian, vehicular, and loading traffic. However, traffic in this area is already difficult. Adding a new apartment building, with no loading berth will create serious parking and traffic problems.

Section 1403.1(g) requires that the Applicant prove that the use of the building at the size, intensity, and location proposed will not adversely affect adjacent and nearby property or be detrimental to the "health, safety, convenience, or general welfare of persons living, working, or visiting in the area." 11 D.C.M.R. § 1403.1(g). The RCNA agrees that converting the vacant warehouse would benefit the area. However, a special exception for height is not necessary to achieve this goal. In contrast to the current proposal, a well designed matter-of-right apartment building would be appropriate in meeting the purposes of the Reed-Cooke Overlay, not cause substantial harm to the neighborhood, and would not erode the integrity of the Reed-Cooke Overlay.

D. Height of Buildings Act of 1910 Must be Taken Into Consideration.

According to the Height of Buildings Act of 1910 ("HBA"), the height of any building within the District of Columbia is limited to the width of the street that the building fronts, plus an additional 20 feet. *See* D.C. Code Ann. § 6-601.05(a) (2002).[5] Although the HBA of 1910 has not been discussed or argued by the Applicant, it is relevant to the Board of Zoning Adjustment's decision because the 1929 Act which, created the Zoning Commission, specifically states that no zoned area shall be in violation of the HBA. *See Garrity v. District of Columbia,* 86 F.2d 207, 209 (D.C. Cir. 1936) (quoting the March 1920 Act, which stated "[t]hat the permissible height of buildings in any [zoning] district shall not exceed the maximum height of building now authorized upon any street in any part of that district by the Act of Congress approved June 1, 1910, . . . regulating the height of buildings in the District of Columbia . . . ."). *See generally Techworld Dev. Corp. v. D.C. Preservation League,* 648 F.2d 106, 121 (D.C. Cir. 1986). Finally, although there is no private right of action under the HBA, there are also no special exceptions or variances that a developer could apply for, making the HBA a mandatory height limitation for the Applicant. *See Techworld,* 648 F.2d at 120; *see also* DC CODE ANN. §6-601.08 (2001) (outlining the fines per day for violations of the HBA, which are considered a common nuisance, as determined by the Superior Court of the District of Columbia by the Corporation Counsel).

Both the Applicant and the RCNA agree that the width of Kalorama Road is thirty-feet. *See Statement of Applicant* at Tab F, at 5. Therefore, following the mandatory HBA, the building in question may only be constructed to a maximum possible height of fifty-feet. The RCNA requests the Board of Zoning Adjustment take into consideration the mandatory

[5] This provision states that "[n]o building shall be erected, altered, or raised in the District of Columbia in any manner as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by 20 feet . . . ." D.C. CODE ANN. § 6-601.05(a) (2002).

limitations of the HBA of 1910 when determining whether to grant or deny the Applicant's request for a height and bulk variance, or even a special exception for the proposed apartment building at fifty-seven-feet.

III. ARGUMENT—LOADING BERTH REGULATIONS

Section 2201 of the Zoning Regulations requires that an apartment house with more than fifty dwelling units provide one fifty-five foot loading berth, one loading platform at two hundred square feet, and twenty-foot deep service/delivery space. While the original proposal incorporated an off-street loading berth along the Site's western edge, the Applicant's new proposal fails to include either a loading berth or a platform as the regulations require. The Applicant states that this feature was eliminated after discussions with "the community." However, the RCNA is unaware of who may have requested the loading berth be moved onto 17th Street, and is opposed to such a proposition.

A. Applicant Should Not Be Granted a Variance for the Loading Berth.

As discussed in Part II of this brief, the Applicant has the burden of demonstrating a variance is necessary. To meet that burden the applicant must demonstrate: (1) by reason of the property's unique characteristics; (2) strict application of the zoning regulations would result in exceptional practical difficulties; and (3) the relief can be granted without causing substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations.

1. The Applicant's Property is Not Unique to the Reed-Cooke Neighborhood.

For the same reasons stated earlier in this brief the Applicant fails to meet the first prong of the test. *See supra* at 7.

2. The Applicant has Failed to Demonstrate That Strict Compliance with the Zoning Regulations Would Result in Exceptional Practical Difficulties.

The only practical difficulty asserted by the Applicant is that the alley system cannot reasonably house a loading berth in the rear of the building. On the one hand, the Applicant states the alley is too narrow to accommodate a fifty-five foot tractor-trailer. Yet, in the same sentence the Applicant contradicts that same statement, by asserting the nature and use of the building would not necessitate that size trucks. Additionally, the Applicant asserts that by moving the loading dock to 17th Street, it will avoid conflicts in the heavily trafficked alley. The RCNA disagrees with this position. While traffic in the alley will likely be increased if the existing loading dock were to be used, the overall impact on the neighborhood would be much less adverse than if trucks were loading and unloading directly on 17th Street. Furthermore, the parking situation is a wash. Finally, it should be noted that the Applicant concedes that the project could incorporate an off-street loading berth along the Site's western edge. *See Statement of Applicant* at 11. Thus, the Applicant fails to demonstrate that strict compliance with the zoning regulations would result in exceptional practical difficulties.

3. The Current Proposal Will Cause Substantial Detriment to the Community and Harm to the Public Good.

The Applicant attempts to argue that there will be no substantial detriment from the lack of a loading berth for this fifty-four unit apartment building. This fails to take into account that Kalorama Road and 17th Street are highly traveled and narrow roadways. Placing a loading berth

on 17th Street is cause for particular concern. When residents are moving in and out, or receiving deliveries, there exists the potential that large trucks loading and unloading will completely choke off one of the main thoroughfares in the neighborhood. As it is now, two trucks cannot pass each other when traveling in opposite directions on either Kalorama Road or 17th. Street. The RCNA members believe that placing a loading berth on 17th Street will be more than just an inconvenience, it will create a safety problem if emergency vehicles cannot easily pass through the area. Finally, even the Applicant's own traffic report is not definitive on the subject, calling this situation "generally adequate" for traffic, parking, and safety purposes. *See Statement of Applicant*, Tab F at 18. The RCNA requests that the board deny the variance for the elimination of a loading berth.

IV. OTHER CONSIDERATIONS—AGENCY REPORTS

The Office of Planning and the Advisory Neighborhood Commission ("ANC") have taken opposing views on this application. At its November 18, 2002 meeting, the ANC-1C voted in support of the Applicant's proposal, while the Office of Planning generally opposes the loading berth and height variances. Issues and concerns raised in ANC recommendations receive "great weight" by the Board. *Foggy Bottom Ass'n v. District of Columbia Board of Zoning* Adjustment, 791 A.2d 64, 76 (D.C. 2002). However, the RCNA requests that the Board take into account certain inadequacies with the ANC's vote. *See generally Neighbors Against Foxhall Gridlock v. District of Columbia Board of Zoning Adjustment,* 792 A.2d 246, 249 (D.C. 2002) (although given "great weight," the Board is not obliged to follow the ANC recommendation and should "pay specific attention to the source, as well as the content of the ANC recommendations."). Further, the Board should determine whether to grant deference to an

ANC vote while also considering the views of other members of the proceedings. *See id.* (citing *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1384 (D.C. 1977)).

According to the minutes of the November 18 meeting, ANC-1C supports the Applicant's proposal but only after amending the resolution to include the caveat that the "construction plan [is] designed to minimize inconvenience to other residents and businesses in the area to the extent practical." *See Minutes of the ANC Meeting*, Nov. 18, 2002 at 3, Attachment D. As discussed above, there is substantial detriment to the community members from this project and the residents and businesses of the neighborhood will indeed be inconvenienced, rendering the ANC's resolution ambiguous. Furthermore, the rational for the ANC's vote in support of the Applicant is unclear, as there is a lack of consideration of the Reed-Cooke Overlay, or of specific heights or details of the proposed project in the minutes of the meeting. Thus, the RCNA requests that the Board analyzes the votes of the four members supporting the Applicant's proposal only in the context of the other reports and of the community opposition to this project.

V. CONCLUSION

For the reasons stated above, the RCNA requests the Board deny the Applicant's request for either a special exception or a variance regarding the proposed height of fifty-seven feet. The RCNA also requests that the Board deny the Applicant's request for a variance from the loading berth requirements of the zoning regulations. Finally the RCNA requests the board grant any other relief it deems applicable to uphold the purposes and goals of the Reed-Cooke Overlay.

Respectfully submitted,

American University,
Washington College of Law,
Community and Economic Development Law Clinic

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A

Attachment A: Table 3 Comparisons-Economic Feasibility of the Project Rehabilitated as a 42-unit Apartment Building

	Bolan Smart Report	RCNA assessment	Difference	Bolan Smart assumptions/comments	RCNA assumptions/comments
Costs					
Purchase price	1,624,270	750,000	874,270	assessed value	purchase price
Cost of construction	6,725,250	6,725,250	-	53,802 sq ft @ $125 per sq ft	same
Parking	100,800	100,800	-	8,400 sq ft @ $12 per sq ft	same
Total cost	**8,450,320**	**7,576,050**	**874,270**		
			-		
Income			-		
Rental income	1,143,300	1,371,960	(228,660)	53,802 sq ft x 85% = 45,732 sq ft @ $2.50 per sq ft x 10 (months?)	same using 12 months
Vacancy/credit	(57,165)	(68,598)	11,433	5% of income	same
Subtotal	**1,086,135**	**1,303,362**	**(217,227)**		
Operating expenses & tax	(412,731)	(456,176)	43,445	38%	35% (consistent with Bolan Smart Table 2)
Subtotal	**673,404**	**847,186**	**(173,782)**		
Parking income	86,400	86,400	-	48 spaces @ $150 per month	same
NOI	759,804	933,586	(173,782)		
Value @ CAP	**8,442,267**	**10,373,178**	**(1,930,911)**	**9%**	**9%**
			-		
Pre-tax profit/loss	**(8,053)**	**2,797,128**	**(2,805,181)**		



FOCUS - 34 of 35 DOCUMENTS

*** THIS DATA IS FOR INFORMATION PURPOSES ONLY ***

PROPERTY RECORD FOR DISTRICT OF COLUMBIA

ESTIMATED ROLL CERTIFICATION DATE JANUARY 1, 2002

Owner: JEMALS WHEEL LLC (Company/Corporation)

Mailing Address: C/O DOUGLAS DEVELOPMENT COR, 702 H ST NW #400, WASHINGTON, DC 20001

Property Address: 1701 KALORAMA RD NW, WASHINGTON, DC

********** SALES INFORMATION **********

Recorded Date: 10/17/1997

********** ASSESSMENT INFORMATION **********

Assessor's Parcel Number: 2566 0090

Legal Description: CITY: WARD 1

Brief Description: SQUARE 2566 LOT 0090 NBHD: MOUNT PLEASANT

Market Value Year: 2002

Market Land Value: $ 1,233,540

Market Improvement Value: $ 390,730

Total Market Value: $ 1,624,270

Land Use: WAREHOUSING - MULTI-STORY

Assessment Year: 2002

Total Assessed Value: $ 1,624,270

********** TAX INFORMATION **********

Tax Amount: $ 30,049.00

Tax Year: 2003

********** PROPERTY CHARACTERISTICS **********

Year Built:	No. of Buildings:
Stories:	Style:
Units:	Air Conditioning:
Bedrooms:	Heating:
Baths:	Construction:
Partial Baths:	Basement:
Total Rooms:	Exterior Walls:
Fireplace:	Foundation:

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DISTRICT OF COLUMBIA 1701 KALORAMA RD NW, WASHINGTON, DC

Garage Type:		Roof:	
Garage Size:		Elevator:	
Pool/Spa:		Lot Size:	22428 SF
		Building Area:	19675

TAPE PRODUCED BY COUNTY: 3/2002

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1 of 1 DOCUMENT

*** THIS DATA IS FOR INFORMATION PURPOSES ONLY ***

PROPERTY TRANSFER RECORD FOR DISTRICT OF COLUMBIA

Buyer: JEMAL S WHEEL LLC

Seller: 1701 KALORAMA LP

Property Address: 1701 KALORAMA RD NW, WASHINGTON, DC 20009-2605

********** SALES INFORMATION **********

Recorded Date: 10/17/1997

Sale Price: $ 750,000 (Full Amount Computed From Transfer Tax)

Total Transfer Tax: $ 750.00

Document Number: 67430

Deed Type: DEED

Assessor's Parcel Number: 2566-0090

Legal Description: LOT: 90; SECTION: 2566

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DEVELOPMENT ACTIVITY IN THE REED-COOKE AREA

ID on Map	Project Address	Developer	# Of Units	Relief requested	Additional Info	Status
1	1631 Kalorama Rd.	Smith& Kenyon Auctioneers and appraisers	N/A	N/a		By-right development Proposed auction house
2	2480 16th St.	Potomac Investment Properties	166 units	PUD with rezoning to R-5-D.	Proposed on the existing Dorchester Apartments property but with entrance on 17th Street.	Proposal not submitted to Zoning Commission
3	2412 Rear 17th St. (Colortone Building	Adams Investment Group	12 units	Variance for FAR; alley lot restrictions; parking; lot occupancy	15,500 sq, ft. Patricia M. Sitar Center. Existing building will remain ad 2 floors added	OP Supported. Approved by BZA
4	17001 Kalorama Rd.	Douglas Development	65 units	Variance for FAR, lot occupancy, recreational space, parking isle width; SE for increase in height and roof structure setbacks	Community does not support the height request	BZA Hearing scheduled for December 10, 2002. OP currently not in support of proposed 65-ft. height.
5	1700 Kalorama Rd.	RWN Development Group	32 units	N/a	Existing 2- story office. New development will continue office on ground floor and 3-floors of residential use.	By-Right development
6	2327 Kalorama Rd.	Adams Investment Group/PN Hoffman	68 units	Variance for FAR, Lot Occupancy; SE for height and, roof structure		OP Supported. Approved by BZA October 29, 2002
7	2329 Champlain St.	TBA	13 units	Variance for lot occupancy and FAR; se for height	Retained Brass Knob, a small retail business on the ground floor	OP Supported. Approved by BZA
8	2351 Champlain St.	N/A	N/A	N/A		Raze permit granted to demolish existing building. No proposal submitted.
9	2357 Champlain St.	Adams Investment Group	8 units	N/A		By-right development
10	2363 Champlain St.	Linde Development	31 units	N/A		By-right development
11	Lofts at Adams Morgan	PN Hoffman	approx. 80 units	PUD Approved	4,000 sq. ft. retail and 350 public parking spaces	Currently occupied



Feature Key

Zoning Boundaries

Square Index

REED-COOKE DEVELOPMENT ACTIVITY

DC Office of Planning
November 14, 2002

Scale 1:1896

25 0 25 50 75 Feet

Attachment 1



DRAFT

ADVISORY NEIGHBORHOOD COMMISSION 1C
Adams Morgan

Minutes of November 18, 2002, Meeting

A scheduled agenda and forum meeting of Advisory Neighborhood Commission 1C was held on November 18, 2002, at the 3rd District Police Station. A quorum being present, Chair Miscuk called the meeting to order at 6:50 pm.

Attending were Commissioners Roth, Wright, Miscuk, Jovanka, Johnson, Bailey Gibson and Klempay. Approximately 40 members of the public attended.

PLANNING

Commissioner Klempay moved to adopt the Calendar Year 2003 Meeting Schedule. The motion was seconded and approved by voice vote:

YEA Roth, Miscuk, Bailey, Johnson, Gibson, Klempay

SECRETARY'S REPORT

The Secretary, Commissioner Klempay, distributed copies of the Minutes of the October 2, 2002 Meeting and moved their approval. The Motion was seconded and adopted by voice vote.

The Secretary distributed draft copies of the Minutes of the November 6, 2002 Meeting for review by the Commissioners prior to their being submitted for approval at the December 4, 2002 Meeting.

TREASURER'S REPORT

Commissioner Gibson, Treasurer, reported a bank balance as of 11/18/02 of $43,667.26.

NEW BUSINESS

Commissioner Gibson moved that ANC 1C approve the variances requested by the SED Center. The motion was seconded. Following discussion of the resolution, including recognition by the Chair of several members of the public, the resolution was approved

6-0, as follows:

AYE Wright, Johnson, Bailey, Gibson, Roth, Miscuk
NAY None

1700 Kalorama Road, NW

Chairperson Miscuk recognized Commissioner Johnson and several members of the public to address concerns regarding construction at 1700 Kalorama Road, NW. Mr. Richard Naing, the owner of the property, responded to the questions raised, asserting that the project was "100% matter of right" under the zoning laws, that the necessary demolition and dumpster permits had been obtained, and that he would support the neighbors' request for removal of the parking meters in front of his premises. At the Chair's request, Commissioner-elect Jeff Coudriet agreed to follow up with the owner and the community, with a possible proposal for ANC action to be presented at the December 4th meeting regarding these issues.

1701 Kalorama Road, NW

Chairperson Miscuk called up a resolution offered by Commissioner Brody at the ANC meeting of October 21, 2002, to recommend to the Board of Zoning Adjustment the approval of various variances and special exceptions for the project proposed by Jemal's Wheel LLC at 1701 Kalorama Road, NW. Consideration of this resolution had been twice postponed at previous meetings.

Commissioner Johnson moved to further postpone consideration of the resolution to the December 4th meeting, contingent upon the developer's willingness to request a further extension of the BZA hearing date beyond December 10th. The motion was seconded, discussed, and defeated by a roll call vote of 2-4, as follows:

AYE Johnson, Bailey
NAY Wright, Gibson, Roth, Miscuk

Following further discussion, Mr. Norman Jemal of Douglas Development Corp., accompanied by his architect and attorney, were recognized to explain various changes made in their design and plans as a result of negotiations with the community. This included the removal of one story from the top of the proposed structure, the reduction in the number of units from 64 to 54, the placement of 2 units on the street level (one of which would be an affordable housing unit), the removal of 8 parking spaces to accommodate the street level units, and certain other adjustments. As a result of these changes, the applicant indicated that it would no longer need the FAR variance originally sought.

By unanimous consent, the Commission agreed to Chairperson Miscuk's motion

to strike recommendation of the FAR variance from the resolution.

Following further discussion, by unanimous consent, the Commission agreed to Commissioner Roth's motion to amend the height provision of the resolution by inserting "or variance" after "Special exception".

Chairperson Miscuk recognized all members of the public who wished to speak on this resolution, after which the Commissioners engaged in further discussion.

Commissioner Roth moved to amend the resolution by inserting in the first "Resolved" clause the following: "subject to the incorporation in the BZA order of a construction plan designed to minimize inconvenience to other residents and businesses in the area to the extent practical." The motion was seconded and discussed.

By unanimous consent, the Commission agreed to Commissioner Gibson's motion to call the question on the pending amendment and on all pending questions.

The pending Roth amendment was approved by a roll call vote of 6-0, as follows:

AYE Wright, Johnson, Bailey, Gibson, Roth, Miscuk
NAY None

The resolution, as amended, was then approved by a roll call vote of 4-2, as follows:

AYE Bailey, Gibson, Roth, Miscuk
NAY Wright, Johnson

The resolution, as approved, reads as follows:

Resolution to Support the Project at 1701 Kalorama Road

Be it resolved that, subject to the incorporation in the BZA order of a construction plan designed to minimize inconvenience to other residents and businesses in the area to the extent practical, the Adams Morgan ANC (ANC 1C) supports the proposed project at 1701 Kalorama Road with the following relief:

Variance from the lot occupancy requirement of Section 772;
Variance from the residential recreation space requirements of Section 773;
Variance from the parking drive aisle width requirements under Section

2117;
Variance from the loading berth requirements of Section 2201;
Special exception or variance from the maximum permitted height requirements under Section 1403; and
Special exception from the roof structure requirements of Section 411.

Be it further resolved that the officers of ANC 1C are authorized to communicate this intent to all agencies, offices, parties and other elected officials as necessary.

Emmaus Grant Application

Chairperson Miscuk turned the gavel over to Vice-Chairperson Wright and then moved that the ANC approve a $1,000 grant to Emmaus Services for the Aging to support its Christmas Day home visitation program for senior citizens, as more fully described in the grant application submitted to the ANC and distributed to the Commissioners. The motion was seconded, discussed, and approved by a roll call vote of 6-0, as follows:

AYE Miscuk, Roth, Bailey, Wright, Gibson, Johnson
NAY None

Citizen Commendations

Commissioner Johnson moved to commend community members Edward G. Jackson, Peter Petropolis, Peter Lyden, and Sandra Dominey for their community service. The motion died for lack of a second.

Commissioner then moved to limit the commendation motion to Mr. Jackson. The motion was seconded and discussed.

Commissioner Roth moved to postpone consideration of the motion to the December 4th meeting. The motion to postpone was seconded, discussed, and approved by a roll call vote of 5-1, as follows:

AYE Wright, Bailey, Gibson, Roth, Miscuk
NAY Johnson

Adjournment

Commissioner Johnson moved to adjourn. The motion was seconded and approved by voice vote. Whereupon, the meeting was adjourned at 11:25 pm.