GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: JLS for Andrew Altman

DATE: May 13, 2003

SUBJECT: BZA Case 17011 Special Exception Request

APPLICATION

The application by The American Association of Homes & Services for the Aging, (AAHSA) pursuant to 11 DCMR 3104.1, seeks special exception relief to use the entire ground floor of the building at 2519 Connecticut Avenue, N.W., for office purposes. Previous Board approval when the building was constructed required that no less than fifty per cent (50%) of the ground floor bemused for retail purposes. The building is in the Woodley Park Neighborhood Commercial Overlay/C-2-A District and therefore, is subject to Chapter 13 of the Zoning Regulations, Neighborhood Commercial Overlay District.

OFFICE OF PLANNING RECOMMENDATION-IN-BRIEF

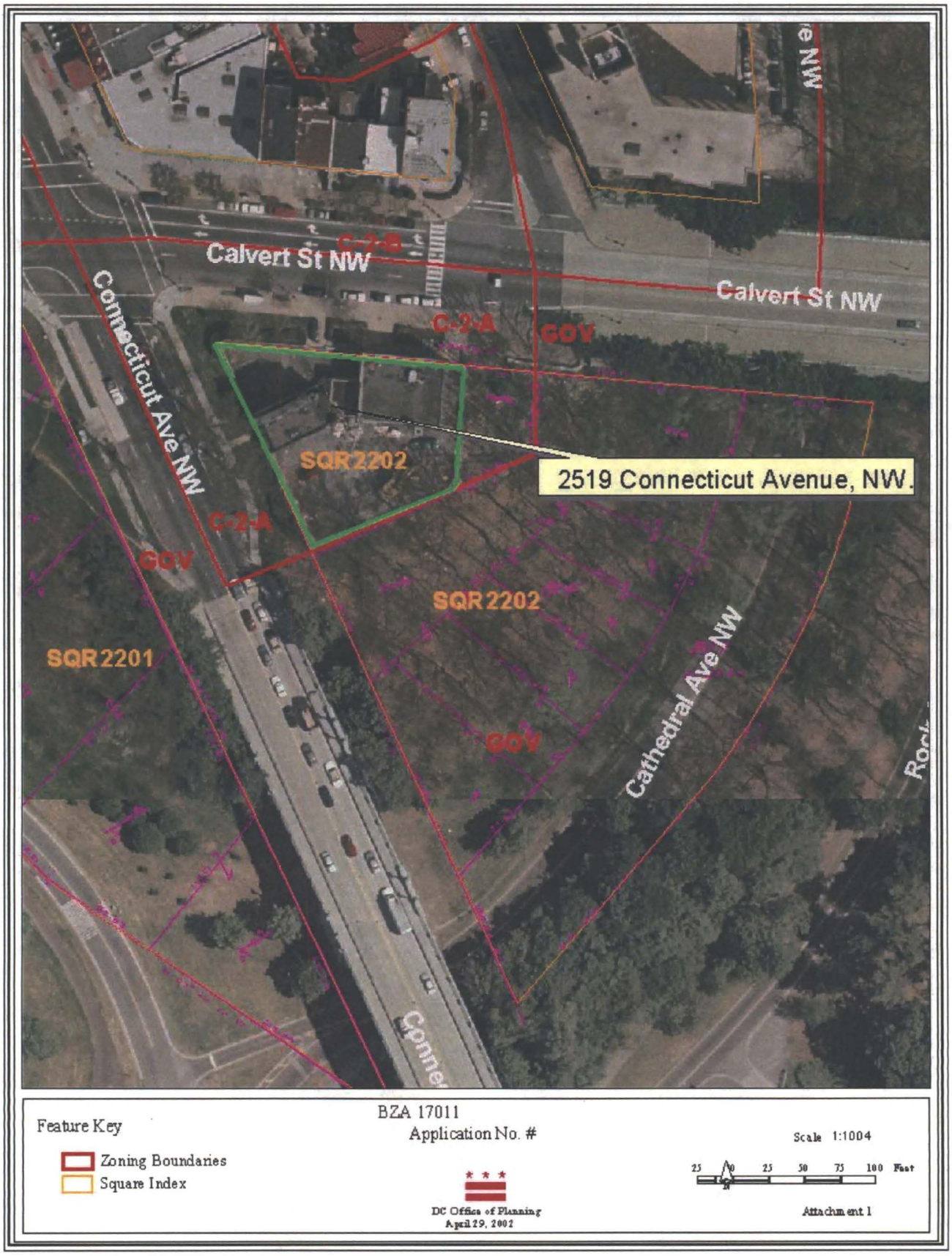
The Office of Planning recommends **approval** of the subject application, with the conditions identified in the **FIRST AMENDMENT TO AGREEMENT** made and entered into on 26th day of April, 2003, by and between **AMERICAN ASSOCIATION OF HOMES AND SERVICES FOR THE AGING,** and a not-for-profit-corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code, as amended ("AAHSA"), and **WOODLEY PARK COMMUNITY ASSOCIATION, A DISTRICT OF COLUMBIA NONPROFIT CORPORATION ("WPCA").** (See attachment No. 1)

SITE AND AREA DESCRIPTION

The subject premises are in the Woodley Park Neighborhood of Ward Three. Calvert Street generally bounds the site to the north, Rock Creek Parkway is to the east and south, and Connecticut Avenue is to the west. The property is at 2519 Connecticut Avenue, N.W., which is in Square 2202, Lot 16. The site is within the Woodley Park Historic District and is zoned C-2-A. The building is currently owned and operated by the

BZA Case No. 17011 Exhibit No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO. 17011
EXHIBIT NO. 28


Calvert St NW
Calvert St NW
Connecticut Ave NW
C-2-A
GOV
SQR2202
2519 Connecticut Avenue, NW.
C-2-A
GOV
SQR2202
SQR2201
GOV
Cathedral Ave NW
Feature Key
Zoning Boundaries
Square Index
BZA 17011
Application No. #
DC Office of Planning
April 29, 2002
Scale 1:1004
25 0 25 50 75 100 Feet
Attachment 1

applicant, The American Association of Homes & Services for the Aging. The site is improved with an 80,050 square foot, three-story building. The applicant occupies the basement level as well as the second and third floors. The applicant also occupies one half (5,000 sf.) of the ground floor. The remaining 5,000 square feet of the first floor, (which was designed for commercial/retail purposes) is the subject of this application.

BACKGROUND

The subject site, located at the southeast corner of Connecticut Avenue & Calvert Street, was formerly a residential structure (old mansion) under the protection of the District of Columbia s historic preservation laws. Brodsky Real Estate Partners, LLC purchased the property with the intention of developing it for use and occupation by The American Association of Homes and Services for the Aging. In order to be in compliance with historic preservation laws, the developer was required to retain the facade of the mansion that was formerly on the site. The main entrance to the current building (which fronts on Connecticut Avenue) is the fa ade of the former mansion. New wings were added to both the north and south sides of the old mansion. American Association of Home & Services for the Aging is a District of Columbia Corporation, which has been located at 2519 Connecticut Avenue, N.W., since January 2001. Services provided by AAHSA include membership services to non-profit long-term care providers. A Board of Directors manages the corporation, with day-to-day operations conducted by the Vice President of Human Resources.



Connecticut Avenue entrance fa ade of old mansion, north and south additions.

On April 15, 1998, the Board of Zoning Adjustment (BZA) issued a summary order approving the application (BZA 16335) of the Estate of Daniel Terra on behalf of Brodsky Real Estate Partners, LLC, pursuant to 11 DCMR 3107.2, for a variance from the floor area ratio limitation of Subsection 1307.7, for construction of a building with retail and office space in a WP/C-2-A District. The Board s approval was conditioned upon the Terms of an Agreement made between Brodsky Real Estate Partners, LLC, (the AAHSA Real Estate Development Partnership) and the Woodley Park Community Association (WPCA) on April 13, 1998. Two key provisions of the agreement were: 1) The building would comply with the height limitations of the WP/C-2-A District; and 2) there would be no less than fifty per cent (50%) retail uses included on the ground floor. *(See attachment No. 1).* According to AAHSA, many efforts were explored and exhausted, since December of 2000 when the building was put in service, in attempts to lease, in whole or in part, the ground floor space for retail purposes. All of the efforts were unsuccessful. AAHSA states it is now at a point where it s very economic viability is at risk if it is unable to lease the ground floor. Recently, Long and Foster (a real estate

corporation) agreed in principal to lease the available 5,000 square feet of space on the ground floor, but strictly for office purposes.

APPLICANT'S PROPOSAL

The applicant is seeking special exception relief to modify the terms of the agreement incorporated in BZA Summary Order No. 16335 and from the strict application of the Zoning Regulations pursuant to DCMR Title 11, Sections 1304.1, to establish office use on the entire ground floor of the subject building, which is in the Woodley Park/C-2-A District. The strict application of the zoning regulations would require the applicant to provide no less than fifty per cent (50%) of retail uses on the ground floor.

ZONING ANALYSIS

Because the prospective lease with Long and Foster did not satisfy the ground floor retail required of Zoning Regulations Chapter 13 Neighborhood Commercial Overlay District, and the terms of an Agreement with the Woodley Park Community Association, which were made part of and incorporated into BZA Summary Order No 16335, the applicant is seeking: 1) special exception relief by the Board from §1304.1 and 2) approval of the lease between AAHSA and Long and Foster, without the minimum of fifty per cent (50%) of ground floor retail requirement, which was specifically required in the Agreement with the Woodley Park Community Association . If the applicant were to lease the available one-half of the ground floor space entirely for office purposes, it would necessitate a modification to the agreement. It is the applicant's position that there exist an exceptional or extraordinary situation or condition related to the use of the subject property, which has and continues to be a practical difficulty to comply with the Zoning Regulations.

The subject site is within the boundaries on the Woodley Park/C-2-A Neighborhood Commercial Overlay District. As such, it is subject to the provisions of Section 1300 of the zoning regulations:

1300 NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

1300.1 Neighborhood Commercial (NC) Overlay districts is established to preserve and enhance neighborhood shopping areas, by providing the scale of development and range of uses that are appropriate for neighborhood shopping and services.

1300.3 The purposes of the NC Overlay District are to:

(a) Encourage a scale of development, a mixture of building uses, and other attributes, such as safe and efficient conditions for pedestrian and vehicular movement, all of which will be as generally required by the Comprehensive Plan;

(b) Encourage retention and establishment of a variety of retail, entertainment, and personal service establishments, predominantly in a continuous pattern at ground level, so as to meet the needs of the surrounding area s residents, worker, and visitors; and
(c) Limit the maximum permitted height of new buildings so as to encourage a general compatibility in scale between new and old buildings.

1302 Designated And Restrictive Uses

1302.1 Any building that occupies or is constructed on a lot in a designated use area within an NC Overlay District shall provide designated retail and service establishments on the ground floor level according to the requirements of this section and any additional requirements of a particular overlay district.

1304 SPECIAL EXCEPTIONS

1304.1 Exceptions from the requirements of this chapter shall be permitted only as a special exception, if approved by the Board of Zoning Adjustment after public hearing, in accordance with/3104, and subject to the following requirements:

(a) The excepted use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the NC Overlay District and the particular NC Overlay District, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity.

The proposed lease of 5,000 square feet of ground floor office space to Long & Foster will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity. NC Overlay Districts are established to preserve and enhance neighborhood-shopping areas, by providing a scale of development and range of uses that are appropriate for neighborhood shopping and services.

Long &Foster s preference is to remain in the Woodley Park community, at a location that is convenient to its clients. The Long & Foster office to be relocated is currently on the northeast corner of Connecticut Avenue & Calvert Street, across from the subject building. They have out grown their existing space, and propose to lease 5,000 squares on the ground floor of the subject building. The



Long and Foster current location.

proposal to relocate in the same neighborhood would be consistent with a stated purpose of the NC Overlay District.

(a) Exceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area that justify the exception or waiver.

The inability to lease one half of the ground floor in the subject building in whole or in part, for retail purposes has created an economic condition that the applicant believes justifies the exception waiver. According to AAHSA, many efforts have been explored and exhausted, since December of 2000 when the



Northwest intersection, Conn. Ave. and Calvert St., NW.



Northeast intersection, Conn. Ave. and Calvert St., NW.



Southwest intersection, Conn. Ave. and Calvert St., N.W.



Southeast intersection, Conn. Ave. and Calvert St., NW.

building was put in service, in attempts to lease, in whole or in part, the ground floor space for retail purposes. All of the efforts were unsuccessful. There are adequate retail services in the immediate area of the subject building, to offset the lack of such services on the ground floor of the subject building. Both the northwestern & northeastern portions of the intersection contain nearby residential buildings and a variety of retail services, and are actively used by pedestrians. The north side of Calvert Street (which is directly across from the subject building) has a variety of retail uses, including restaurants, personal service and a spirit shop. Around the corner, at Connecticut & Calvert, there are a variety of retail, entertainment, and personal service establishments, on both sides of Connecticut Avenue, that are adequate to accommodate the retail needs of employees and visitors to the subject building. There are also residential units in both areas. The variety of retail services that characterize the northwestern & northeastern intersections are lacking at the subject site and intersection. The site is triangular and adjoins undeveloped parkland. The heavily wooded and sloped parkland to the east and south of the subject site, is an excellent compliment for commercial office uses, but limits the attractiveness of the site for retail uses.

There are no other private uses adjacent to the site on the southeastern quadrangle of the Connecticut Avenue/Calvert Street intersection, other than the subject building. The building fronts on Connecticut Avenue, and is between the Duke Ellington Memorial and the Taft Bridges. Both bridges carries traffic over Rock Creek Parkway.

Both Connecticut Avenue and Calvert Street roadways are crossing hazardous for pedestrians walking towards the subject building. The physical isolation of the subject building, from the more retail oriented portions of the intersection, is an attractive feature for office location.



Southeast intersection, Conn. Ave. and Calvert St., NW.



Southeast intersection, Conn. Ave. and Calvert St., NW.

Recently, Long and Foster agreed in principal to lease the available 5,000 square feet of space on the ground floor, but strictly for office purposes.



Advertised 5,000 sf retail spaces.



Available retail space Calvert St. entrance.



Continuation of available retail space.



Rear view of retail space (south end).

There are no other companion uses on the intersection with the subject building. The building is between the Duke Ellington Memorial and the Taft Bridges, with Rock Creek Parkway to the east and south. The intersection at Connecticut Avenue and Calvert Street are complexes and very pedestrian un-friendly. Unless there are very attractive lures, the challenge of crossing dangerous roadways to reach the subject building is not convenient for pedestrians. Both Connecticut Avenue and Calvert Street have six lanes, (three lanes in each direction) and are sixty feet wide. The intersection are controlled by traffic signals that often times catch pedestrians in the middle of the intersection when right turns on red or left turns signals are activated.

(b) Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions.

Vehicular access and egress are located at the east end of the subject building on Calvert Street. The loading dock and a three story-parking garage, that can accommodate a minimum of 75 passenger vehicles, are located in this area of the building, behind a seven foot, fifty per cent open metal security fence. The loading facility is located so delivery vehicles can service the building without stopping or blocking traffic on Calvert Street. Pedestrian ways are clearly separated from vehicular access and egress areas and conflict with principal pedestrian ways, tend to be minimal, and does not create dangerous or otherwise objectionable traffic conditions.



Security fence, loading dock and parking garage entrance.



Parking garage, second level.

(c) The Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the proposes of the NC Overlay District and the particular overlay district.

The BZA recently issued a Summary Order (BZA No.16335, on April 15, 1998) for construction of a building with retail and office space in a WP/C-2-A District. The Board s approval took in consideration matters of design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the proposes of the NC Overlay District and the particular overlay district. The resulting development appears to have addressed these requirements.

1307 The Woodley Park Neighborhood Commercial Overlay District

1307.1 The Woodley Park Commercial (WP) Overlay District is applied to a compact geographic area surrounding the Woodley Park/Zoo Metrorail station, comprising those lots zoned C-2-A in Square 2202 and 2203 and those lots zoned C-2-B in Square 2204.

1307.2 In addition to the purposes in § 1300, the purposes of the WP Overlay District are to provide for safe and efficient pedestrian movement by reducing conflicts between pedestrian and vehicular traffic so as to improve access to retail services, the metro station, and other uses in the area.

1307.3 For the purposes of § 1302, the designated use area shall include any lot within the WP Overlay District that fronts on Connecticut Avenue, Calvert Street, or 24th Street.

1307.4 Foe the purposes of § 1003.2, the designated roadway within the WP Overlay District shall be Connecticut Avenue.

1307.5 No hotel, inn, or fast food restaurant shall be permitted in the WP Overlay District.

1307.6 The maximum permitted height of any building or structure in the WP Overlay District shall be:

(a) Forty feet (40 ft.) in the WP/C-2-A Overlay District; and
(b) Fifty feet (50 ft.) in the WP/C-2-B WP Overlay District.

1307.7 The matter-of-right floor area ratio in the WP Overlay District shall be:

(a) In the WP/C-2-A Overlay District, the matter-of-right floor area shall be 2.5, not more than 1.0 of which may be occupied by nonresidential uses; and
(b) In the WP/C-2-B Overlay District, the matter-of-right floor area ratio shall be 3.0, not more than 1.0 of which shall be occupied by nonresidential uses.

RELATIONSHIP OF THE APPLICATION TO THE COMPREHENSIVE PLAN

The Comprehensive Plan Generalized Land Use Map depicts the AAHSA site in the ***Low-density Commercial Land Use Category.*** Shopping and service areas that are generally low in scale, character and activity and that provide a limited range of retail goods and services are the predominant uses in this land use category.

DOES THE APPLICATION MEET THE SPECIAL EXCEPTION TEST

The Board of Zoning Adjustment has authority to grant special exceptions under provisions of DCMR Title 11, Section 3104.1. The test questions are:

Will the special exceptions be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map?

Yes. *The proposed use of the entire ground floor of the subject building for office purposes will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. The subject building is located in the C-2-A/Neighborhood Commercial Overlay District (NCOverlay District). The C-2-A district is a low-density commercial zone that limits building height to forty feet. However, because the subject building is within an NCOverlay District, included among the uses encouraged, when the underlying district is C-1 is a specific reference to the retention and/or establishment of a variety of retail uses. The designated uses shall occupy no less than fifty per cent (50%) of the gross floor area of the ground level of the building. Entertainment, and personal service establishments, predominantly in a continuous pattern at ground level, so as to meet the needs of the surrounding area s residents, worker, and visitors are also encouraged. The proposed use is office, which is also permitted in the C-2-A District.*

The applicant has been unable to comply with the retail requirement of the WP/NC Overlay District, since the building was opened in 2000. According to AAHSA, many efforts were explored and exhausted, in attempts to lease, in whole or in part, the ground floor space for retail purposes.

The applicant s inability to lease retail space in the subject building may be linked to the physical isolation of the quadrangle of the Connecticut Avenue/Calvert Street intersection, where the subject building is located, (southeast intersection). Both the northwestern & northeastern portions of the intersection contain nearby residential buildings, a variety of retail shops, and a sizeable pedestrians population. These two quadrangles of the Connecticut/Calvert



Subject building, southeast intersection Conn. Ave. and Calvert St.

intersection provide adequate retail services to for residents, employees and visitors to the area, to offset the lack of such services in the subject building.

Will the granting of the special exception tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map?

No. The granting of the requested special exception will not *tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. There are no neighboring properties on the southeastern quadrangle of the intersection at Connecticut Avenue/Calvert Street. The subject building is the only private use. Rock Creek Parkway bounds the property from east to south and the southwestern intersection contain open space parkland. The closest neighboring property to the subject property is*

on the north side of Calvert Street, across from the subject site and around the corner of Connecticut Avenue & Calvert Street, on both sides of Connecticut Avenue.

The terms of the agreement the applicant has with the Woodley Park Community Association (WPCA), specifically required the inclusion of no less than fifty per cent (50%) of the ground floor be used for retail purposes. This agreement was made a part of and incorporated into the BZA Summary Order on Application No. 16335, dated April 15, 1998. Because the applicant has been unable to lease the subject space for retail purposes since the building opened in 2000, they have negotiated a the prospective lease with Long & Foster to lease the space, but strictly for office purposes. On February 26, 2003 the applicant sought and received the support of WPCA, to use the entire ground floor for office purposes.

COMMUNITY COMMENTS

Woodley Park Community Association (WPCA)

An agreement between the applicant and The Woodley Park Community Association was made a part of and incorporated into the BZA Summary Order on Application No. 16335, dated April 15, 1998. If the applicant were to lease the available one-half of the ground floor space without achieving the retail requirement, (not less than fifty per cent 50%) it would necessitate a modification to the agreement. The applicant has sort and received the support of WPCA regarding the lack of achieving ground floor retail requirements. On April 26, 2003, the applicant and WPCA made and entered into a "First Amendment to Agreement by and between the American Association of Homes and Services for the Aging, and the Woodley Park Community Association, that modified the terms of the original Agreement made between Brodsky Real Estate Partners, LLC, (the AAHSA Real Estate Development Partnership) and the Woodley Park Community Association (WPCA) on April 13, 1998.

Advisory Neighborhood Commission (ANC) 3C

The applicant met with the Planning & Zoning Committee of ANC 3C, on Monday, April 21, 2003. The Committee supported the requested modification to the agreement between the applicant and WPCA, and will recommend that the full ANC vote to support the special exception request at the regular monthly meeting, to be held on Monday, April 28, 2003.

OP RECOMMENDATION

After having reviewed BZA application 17011 requesting a special exception to permit a the entire ground floor in a C-2-A/Neighborhood Commercial Overlay District, the Office of Planning recommends that the **Board approve** the application. The Office of Planning finds that the application has satisfactorily addressed the requirements of §1304.1, and has met the burden of proof under §3104 of the Zoning Regulations. OP therefore concludes that approval of the application would be in harmony with the

general purpose and intent of the Zoning Regulations and would not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. OP does however, recommends that if the Board votes to approve this application, Board approval be conditioned upon the terms of the conditions identified in the FIRST AMENDMENT TO AGREEMENT made and entered into on 26th day of April, 2003, by and between the AMERICAN ASSOCIATION OF HOMES AND SERVICES FOR THE AGING, and the WOODLEY PARK COMMUNITY ASSOCIATION, A DISTRICT OF COLUMBIA NONPROFIT CORPORATION ("WPCA"). (See attachment No. 1)

Recording requested by and after recording, return to:
King & Spalding LLP
191 Peachtree Street
Atlanta, Georgia 30303-1763
Attention: Margaret A. McCue, Esq.

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT (this "Amendment"), is made and entered into this 26th day of April, 2003, by and between **AMERICAN ASSOCIATION OF HOMES AND SERVICES FOR THE AGING**, a not-for-profit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code, as amended corporation ("AAHSA"), and **WOODLEY PARK COMMUNITY ASSOCIATION**, a District of Columbia nonprofit corporation ("WPCA").

W I T N E S S E T H: That,

WHEREAS, Brodsky Real Estate Partners, LLC (predecessor in interest to AAHSA) and WPCA entered into that certain Agreement, dated April 13, 1998, recorded as Instrument Number 72026 on Sept 14, 1998 in the Recorder of Deeds of the District of Columbia (the "Agreement") regarding that certain real property more particularly described on Exhibit "A" hereto, and

WHEREAS, the Agreement provides that, as long as required by the Woodley Park Overlay District portion of the Zoning Regulations, at least 50% of the rentable ground floor space of 2519 Connecticut Avenue, Washington, DC ("Subject Property") shall be utilized for a retail use;

WHEREAS, AAHSA and WPCA desire to amend the Agreement to evidence WPCA's consent to a proposed alternative use for up to 5,002 square feet of the ground floor of the Subject Property ("Rental Space") as hereinafter provided in this Amendment.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) in hand paid by each party hereto to the other at and before the sealing and delivery of these presents, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, AAHSA and WPCA, intending to be legally bound, do hereby agree and amend the Agreement as follows:

1. **Definitions**. Capitalized terms not defined herein shall have the meaning as set forth in the Agreement.

2. Wherever reference is made to BRODSKY, the same shall be construed to refer to its current successor-in-interest, AAHSA.

3. Notwithstanding the provisions of Section 13 of the Agreement, the parties understand and agree that AAHSA intends to lease the Rental Space to a tenant for use as a residential real estate sales office for a lease term not to exceed 10 years, with a maximum renewal option of five years. Therefore, the effective date of AAHSA's obligations under Section 13 of the Agreement shall not commence until the expiration or termination of the lease term, or fifteen years from the date such lease term commences, whichever first occurs; provided that in the event tenant seeks to sublet all or part of the space, the tenant must first make reasonable efforts to sublet for preferred retail uses, and, if unable to sublet for those uses, may sublet only for the real estate uses permitted under Section 5.A of this Amendment.

4. In consideration of the mutual promises and covenants contained herein, WPCA agrees to support the request for zoning relief being sought from the Board of Zoning Adjustment ("BZA") in Application No. 17011, filed on March 7, 2003, including providing a letter of support.

5. In consideration of the mutual promises and covenants contained herein, AAHSA agrees to do the following:

A. Ensure that (i) said Rental Space shall be used solely for the tenant's residential real estate sales business, including the tenant's mortgage and title insurance activities ancillary to the real estate sales conducted from the rental space, (ii) said office shall not be furnished for occupancy by more than 20 persons at any one time, and (iii) not more than 15 parking spaces shall be reserved for the use of the lessee of the Rental Space, including the lessee's employees and visitors.

B. Implement the following streetscape enhancements and landscaping plans, which are intended to ensure that use of the Rental Space for office rather than retail use does not compromise Woodley Park's sidewalk environment at Connecticut and Calvert Streets:

(i) Clear identification of a main entrance for the Rental Space. This main entrance should include an entire bay of transparent glass, an internally-lit entrance space, and a general sense of openness and connection to the sidewalk.

(ii) Maintenance of awnings over all ground floor windows and the entrance of the Rental Space.

(iii) Application of a translucent but not transparent filter (either applied directly to the window or in the form of a roller shade) to all window bays of the Rental Space. The front entrance bay will not receive this treatment, as mentioned in (a) above. This translucent treatment will be applied in lieu of vertical or horizontal blinds, shutters, or pleated shades of any type.

(iv) Decorative planters (at least two) will be established on both sides of the entrance to the Rental Space and maintained with seasonal flowers or plantings.

(v) The four planting beds along Calvert Street will be landscaped with seasonal plantings, including for the winter months, in accordance with the original Agreement.

(vi) Signage for tenants of Rental Space shall comply with and be in the character specified by the D.C. Office of Planning's Storefront Guidelines for commercial signs (www.planning.dc.gov/documents/thrive_pdf.shtm).

(vii) AAHSA shall ensure that the interior entrance bay lighting and any lighting on exterior of Rental Space is illuminated until 10 p.m. every night in a manner that is visible from the street.

(viii) AAHSA shall follow, with respect to the decorative planters and planting beds, a planting schedule, which contemplates changing planting arrangements on or near the following dates each year: April 15, June 15, September 15, November 15, as may be reasonably adjusted, based on weather conditions and other matters beyond AAHSA's reasonable control.

AAHSA further agrees to implement the approved streetscape enhancements no later than the date on which the tenant commences occupancy of the Rental Space.

C. AAHSA shall request that the BZA incorporate this amended Agreement as a condition of any Final Order issued in connection with the BZA Application 17011, or as a condition of any future or amended application that may be made by AAHSA requesting relief similar to Application 17011 for the Subject Property. The provision AAHSA will request be included as a condition to any order shall be substantially similar to the following:

The terms and conditions of a certain amendment, dated _____, 2003, to the

April 13, 1998 Agreement between BRODSKY and WPCA are incorporated in this order as though fully set forth herein and shall be enforceable in the same manner as any other condition contained in an order of this Board.

6. This Amendment shall be recorded with the Recorder of Deeds and shall run with the land and be binding on the parties hereto and their successors or assigns. Evidence of the recordation of this document shall be furnished to WPCA not later than close of business April 29, 2003. If AAHSA fails to provide evidence of recordation by said date, WPCA may, at its option, declare this Agreement to be null and void.

7. AAHSA agrees to reimburse WPCA for expenses incurred by WPCA in connection with this Amendment, up to $2,000.00.

8. Section 22 of the Agreement is amended to provide that all notices to WPCA will be sent to the following:

WPCA
P.O. Box 4852
Washington, D.C. 20008

9. **Miscellaneous**.

A. Except as provided in Section 6, above, if any provision of this Amendment, or the application thereof to any person or circumstance, shall be to any extent held invalid, inoperative or unenforceable, the remainder of this Amendment, or the application of such provision to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Amendment; and each provision of this Amendment shall be valid and enforceable to the fullest extent permitted by law.

B. This Amendment shall be construed in accordance with the laws of the District of Columbia.

C. The paragraph headings in this Amendment are for convenience only, shall in no way define or limit the scope or content of this Amendment, and shall not be considered in any construction or interpretation of this Amendment or any part hereof.

D. Nothing in this Amendment shall be construed to make any of the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of any other Party.

Except as herein expressly modified or amended, all terms and conditions of the Easement Agreement are hereby ratified and confirmed by the Parties and remain in full force and effect.

IN WITNESS WHEREOF, AAHSA and WPCA have caused this Amendment to be executed under seal as of the day and year first above written.

AAHSA:

AMERICAN ASSOCIATION OF HOMES AND SERVICES FOR THE AGING

By: _____
Name: LISA BROWN MORTON
Title: VP, HUMAN RESOURCES & ADMINISTRATION

ACKNOWLEDGEMENT

STATE OF DISTRICT OF COLUMBIA
COUNTY OF _____

This instrument was acknowledged before me on April 25, 2003 by Lisa Marie Morton-Brown as Vice President of American Association of Homes and Services for the Aging, a not-for-profit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code, as amended.

_____
Notary Public
Print Name: Fatima Winter

(Seal)

My commission expires: _____

FATIMA C. WINTER
Notary Public District of Columbia
My Commission Expires April 14, 2007

WPCA:

WOODLEY PARK COMMUNITY ASSOCIATION,
a D.C. nonprofit corporation

By: Ron J David

Name: Ron David
Title: President

ACKNOWLEDGEMENT

~~STATE OF~~ DISTRICT OF COLUMBIA
~~COUNTY OF~~ _____

This instrument was acknowledged before me on 4/26, 2003 by Ron David as President of Woodley Park Community Association, a corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code.

Gilpin C Walker
Notary Public
Print Name: Gilpin C WALKER

(Seal)

My commission expires: 8/31, 2004

EXHIBIT A

All of that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as follows:

Parcel I:

Lot 12 in Square 2202 in a subdivision made by Willett and Waggaman of part of Block 7 in Waggaman and Ridout, Trustees' Addition to the City of Washington, formerly known as "Woodley Park", as per plat recorded in Liber County 23 at folio 70 in the Office of the Surveyor for the District of Columbia.

Parcel II:

Lot 114 in Square 2202 in a subdivision made by Louis A. Montague, as per plat recorded in Liber 123 at folio 18 in the Office of the Surveyor for the District of Columbia.

Parcel III:

Lot 115 in Square 2202 in a subdivision made by Louis A. Montague, as per plat recorded in Liber 123 at folio 18 in the Office of the Surveyor for the District of Columbia.

Parcel IV:

All of Lot 112 in Square 2202 in a subdivision made by Franklin T. Sanner and others, as per plat recorded in Liber 38 at folio 136, in the Office of the Surveyor for the District of Columbia, except the East .375 feet front on Calvert Street by full depth of 20 feet of said Lot.

Note: At the date hereof the above described land is known for assessment and taxation purposes as Lot 813 in Square 2202.

Parcel V:

Part of Lot 112 in Square 2202 in a subdivision made by Franklin T. Sanner and others in Block 7 and 22, "Woodley Park", as per plat recorded in Liber 38 at folio 136, in the Office of the Surveyor for the District of Columbia, and being more particularly described as follows:

BEGINNING for the same at a point in the Southerly line of the Northwesterly line of lot 115 and thence Northwesterly with said line of Calvert Street, 4-1/2 inches to a point; thence Southwesterly on a line parallel to the Northwesterly line of said Lot 115, 20 feet to another line of said Lot 115; thence Southeasterly with said last mentioned line of Lot 115, 4-1/2 inches to the aforesaid Northwesterly line of said Lot 115, and thence Northeasterly with the said Northwesterly line of said Lot 115, 20 feet to said line of Calvert Street, and the place of beginning.

Note: At the date hereof the above described land is known for assessment and taxation purposes as Lot 816 in Square 2202.