EXHIBIT
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16233 of 5626-28 Connecticut Avenue Associates LP., pursuant to 11 DCMR 3108.1, for a special exception under Section 214 to re-establish an accessory parking lot in an R-2 District at premises 3831 McKinley Street, N.W. (Square 1860, Lots 5-7, 17 and 18).

HEARING DATE: **May 21, 1997**
DECISION DATE: **June 4, 1997**

ORDER

SUMMARY OF EVIDENCE:

The property that is the subject of this application is 3831 McKinley Street, N.W. It is located on the north side of McKinley Street, N.W., with 39th Street to the west and an alley to the east. It is zoned R-2 and is currently being used as a parking lot.

The R-2 District consists of those areas that have been developed with one-family semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. It is expected that these areas will continue to contain some small one-family detached dwellings.

The neighborhood is low density commercial along the adjacent Connecticut Avenue, Morrison and McKinley Streets, N.W., and low to moderate density residential to the east and west of the commercial area. Use as a single-family dwelling is the primary use in the area.

The applicant is seeking a special exception to re-establish and continue to operate an accessory parking lot at the subject site for the use and benefit of Magruder's food store. The parking lot has 56 spaces.

Issues and Arguments:

Accessory Parking Criteria:
Section 214 of the Zoning Regulations permits the location and operation of an accessory parking lot in a residential zone district if approved by the Board, subject to the provisions as indicated below. The Board's previous approval under Application No. 15587 established that the subject lot complied with the provisions of 11 DCMR 214 as an accessory parking lot. The applicant stated that its lot continues to meet all the requirements of Section 214

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Subsection 214.1 states that accessory passenger automobile parking spaces elsewhere than on the same lot or part of a lot on which the main use is permitted, except for a one-family dwelling, shall be permitted in an R-1 District, if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Subsection 3108 of Chapter 31 of the Zoning Regulations.

The applicant stated that the main use of the subject accessory parking lot is for the benefit of Magruder's food store. The subject parking lot is not contiguous to the food store.

Subsection 214.2 provides that accessory parking spaces shall be in an open area or in an underground garage no portion of which, except for access, shall extend above the level of the adjacent finished grade.

The applicant stated that the accessory parking lot spaces are in an open area and are at the level of the adjacent finished grade.

Subsection 214.3 provides that accessory parking spaces shall be located in their entirety within two hundred feet (200 ft.) of the area to which they are accessory.

The applicant stated that the 56 accessory parking spaces are located in their entirety within two hundred feet (200 ft.) of Magruder's food store, the building to which they are accessory.

Subsection 214.4 states that accessory parking spaces shall be contiguous to or separated only by an alley from the use to which they are accessory.

The applicant stated that the parking spaces in question are separated by a 15-foot public alley from the use to which they are accessory.

Subsection 214.5 provides that all provisions of Chapter 23 of this title regulating parking lots shall be complied with, except that the Board may in an appropriate case under Subsection 2303.3 modify or waive the conditions specified in Subsection 2303.2 where compliance would serve no useful purpose.

The applicant stated that the provisions of Subsection 2303.1 continue to be met and there is no request for a waiver or modification of the provisions of Subsection 2303.2.

No comment related to this provision from ANC 3G or others.

Subsection 214.6 stated that it should be economically impracticable or unsafe to locate accessory parking spaces within the principal building or on the same lot because of the following:

(a) Strip zoning or shallow zoning depth;

(b) Restricted size of lot caused by adverse adjoining ownership or substantial improvements adjoining or on the lot;

(c) Unusual topography grades, shape, size, or dimensions of the lot;

(d) The lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets; or

(e) Traffic hazards caused by unusual street grades or other conditions.

The Zoning Map reflects that it would be economically impracticable to locate accessory parking spaces on the same lot because of the existing strip zoning and restricted size of the lot caused by adverse adjoining ownership.

Subsection 214.7 states that accessory parking spaces shall be located, and facilities in relation to the parking lot shall be so designed, that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions.

The applicant testified that the points of ingress and egress are located on McKinley Street and not on Connecticut Avenue which has a much heavier traffic flow. Lots 5-7, 17 and 18 of Square 1860 are bounded by 39th and McKinley Streets, Connecticut Avenue and a 15-foot public alley to the north and east, thus buffering the subject site from becoming objectionable to adjoining or nearby property.

Some neighbors testified in opposition. They submitted photographs to support their concerns that primarily addressed the following issues:

1) Location of trash collection containers;

2) Illegal parking and turning of delivery trucks; and

3) Noise and pollution generated by the trucks.

William B. Robertson who resides at 3834 McKinley Street, N.W. also opposed the application. He focused his testimony on the negative impact the presence of the parking lot was having on the neighborhood. He identified the following concerns:

(1) The unwelcome presence of large delivery trucks in the neighborhood;

(2) Illegal maneuvering of these trucks while making deliveries;

(3) Garbage trucks which affect traffic as they back into the adjacent alley to remove the garbage;

(4) A lot attendant is needed to assure that only customers for Magruder's use the parking lot and to ensure that the site is secured during the nights;

(5) The damage that is done to the curb and sidewalk;

(6) The parking lot is poorly designed to accommodate traffic for the type of business being served. It currently serves too many different purposes;

(7) Poor maintenance of trash containers which are often over flowing;

(8) The site should be secured during non-business hours;

(9) Truckers should not arrive before 7:00 a.m. as the noise they make is very disturbing.

Subsection 214.8 states that before taking final action on an application for use as an accessory parking space, the Board shall submit the application to the D.C. Department of Public Works for review and report.

The application was submitted to the D.C. Department of Public Works (DPW) on March 4, 1997 for review and report. The D.C. Department of Public Works did not file a report.

Section 3108 Special Exceptions:

Subsection 3108.1 provides that the Board is authorized to grant special exceptions where approval will be in harmony with the general purpose and intent of the Zoning Regulations and Map and where it will not adversely affect the use of neighboring property.

The most recent special exception for this property was approved by this Board in Order No. 15587 dated December 18, 1991.

In its report dated May 21, 1997, the Office of Zoning (OZ) stated that the applicant is seeking a special exception to re-establish and continue to operate an accessory parking lot at the subject site for the use and benefit of Magruder's food store. The report noted that the applicant stated that since the last approval, apparently, the certificate of occupancy was lost or was not issued for the property, and the Zoning Administrator has advised that the applicant has to re-establish use of the parking lot and seek renewal of the certificate of occupancy. There has been no change in the use or operation of the parking lot since the granting of the previous order. The applicant, therefore, is seeking the renewal of the special exception for a period of five (5) years to continue to use the premises as accessory parking for Magruder's food store under the same terms and conditions as was indicated in the previous order. The report also stated that the applicant testified that he has met each of the conditions imposed by the Board in its previous Order No. 15587.

OZ established that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and will not adversely affect the use of neighborhood property in accordance with said Zoning Regulations and Map. For these reasons, the Office of Zoning recommended that the application be approved for a period of five years. The approval shall include the conditions previously imposed under BZA Order No. 15587, except for Condition No. 23, which shall be amended to require that the applicant take and

maintain minutes of the quarterly meetings and submit those minutes upon filing for a continuance of special exception.

On May 21, 1997, Advisory Neighborhood Commission (ANC) 3G submitted a list of proposed conditions concerning BZA Application No. 16233. The following conditions were submitted using bold type to show changes from the conditions in the prior order (BZA Application No. 15587).

1. Approval shall be for a period of **TWO (2) YEARS**.

2. Within thirty (30) days of the effective date of this order, the applicant shall:

   (a) repair the pedestrian walkway at the parking lot entrance on McKinley Street;

   (b) repaint the pedestrian walkway at the parking lot entrance on McKinley Street;

   (c) repair the existing ruts and place small boulders or planters on both sides of the parking lot entrance and exit, and the alley entrance to the premises, in order to prevent unsightly ruts in the ground near the entrances and exit; and

   (d) plant additional **evergreens** near the wall on the McKinley Street side of the premises to improve its appearance and to prevent people from sitting and drinking on the wall.

3. A parking attendant from Magruder's shall be present on the lot during all hours of operation and shall assist in keeping the alley clear of vehicles.

4. During the business hours, the parking **lot** attendant shall monitor the entry of cars from McKinley Street into the lot. The parking **lot** attendant shall be instructed to facilitate the safe entry of vehicles from McKinley Street into the parking lot with special attention to pedestrian safety and to facilitate the smooth flow of traffic within the parking lot. The parking **lot** attendant will be stationed near the entrance of the lot whenever possible.

5. Parking on the subject lot shall be exclusively for patrons of Magruder's supermarket, except that on Sundays only five spaces shall be reserved for employees of Magruder's. A sign indicating such restriction shall be posted on the lot.

6. The parking lot, the retaining wall, and the adjacent landscaping shall be maintained, policed, and kept in prime condition. Policing of the lot shall include retrieval of Magruder's shopping carts from neighborhood streets and the removal

of debris from the alleys and areas immediately adjacent to the lot. Such policing shall occur at least three (3) times a day.

7. Damage done by delivery vehicles to sidewalks and neighboring property shall be repaired promptly by the applicant or the tenant.

The applicant submitted into the record 25 pages (225 signatures) of names and addresses of individuals in support of the application.

FINDINGS OF FACT:

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

(1) In Application No. 15587, the Board found that the applicant met the requirements for the accessory parking lot. In the subject application the applicant continues to meet the requirements established in Section 214 of the Zoning Regulations.

(2) The trash trucks will continue to collect and remove trash from the premises.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record, the Board concludes that the applicant is seeking a special exception to re-establish an accessory parking lot in an R-2 District. The granting of such special exception relief requires a showing through substantial evidence that the application can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the application will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map. The applicant must also meet the requirements of Section 214 regulating accessory parking.

The Board concludes that the applicant has met the burden of proof. The Board concludes that the property was authorized as a parking lot in Order No. 15587. The applicant continues to meet the provisions of the Regulations upon which that prior approval was based.

The Board concludes that it has accorded the views of ANC 3G the "great weight" to which they are entitled and the Board is of the opinion that the issues raised by the ANC and members of the community will be adequately addressed in the conditions to this order. Finally, the Board concludes that the application can be granted as in harmony with the general purpose and intent of the zone plan and without adversely affecting the use of neighboring property.

Based on the foregoing, the Board hereby **ORDERS** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Approval shall be for a period of **FIVE YEARS.**

2. Within thirty (30) days of the effective date of this order, the applicant shall:

   (a) continue to allow trash trucks to back into the alley, as this is the only way to reach and remove the trash from the premises;

   (b) repaint the pedestrian walkway at the parking lot entrance on McKinley Street;

   (c) repair the existing ruts and place small boulders or planters on both sides of the parking lot entrance and exit and the alley entrance to the premises in order to prevent unsightly ruts in the ground near the entrances and exit; and

   (d) plant evergreens near the wall on the McKinley Street side of the premises to improve its appearance and to prevent people from sitting and drinking on the wall.

3. A parking attendant from Magruder's shall be present on the lot during all hours of operation and shall assist in keeping the alley clear of vehicles.

4. During the business hours, the parking attendant shall monitor the entry of cars from McKinley Street into the lot. The parking attendant shall be instructed to facilitate the safe entry of vehicles from McKinley Street into the parking lot with special attention to pedestrian safety and to facilitate the smooth flow of traffic within the parking lot, with particular emphasis on achieving the conditions stated immediately above. The parking attendant shall be stationed near the entrance to the lot whenever possible.

5. Parking on the subject lot shall be exclusively for patrons of Magruder's supermarket, except that on Sundays only five spaces shall be reserved for employees of Magruder's. A sign indicating such restriction shall be posted on the lot.

6. The parking lot, the retaining wall, and the adjacent landscaping shall be maintained, policed, and kept in prime condition. Policing of the lot shall include retrieval of Magruder's shopping carts from neighborhood streets and the removal of debris from the alleys and areas immediately adjacent to the lot. Such policing shall occur at least three times a day.

7. Damage done by delivery vehicles to sidewalks and neighboring property shall be repaired promptly by the applicant or the tenant.

8. No discharges from store operations shall be flushed into the alley or the street.

9. The lot shall be secured with a gate, chain or cable during all hours that it is not in operation. The hours of operation shall be between 7:00 a.m. and 9:00 p.m. Monday through Saturday, and between 9:00 a.m. and 6:00 p.m. on Sunday.

10. Deliveries to the supermarket, which occur from the lot, shall be limited to the hours between 7:30 a.m. and 9:00 p.m., Monday through Saturday, and between 9:00 a.m. and 3:00 p.m. on Sunday. All vendors shall be instructed that horn blowing is not allowed at any time. Store personnel shall be signaled through alternative means provided by Magruder's.

11. There shall be proper gardening, mulching, and trimming of trees surrounding the entire lot by store employees or a professional landscaping company at least four times per year. Existing gaps in shrubs or landscaping shall be in-filled or repaired promptly and as needed. Flower beds shall be mulched twice a year. Grass areas shall be seeded and mowed. Specifically, grass shall be mowed once a week in the spring growing season and once every two weeks thereafter. Leaves shall be raked as needed. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance. The D.C. Department of Public Works shall approve the plantings along 39th and McKinley Streets.

12. Additional natural screening, such as cypress bushes or other hedges, shall be provided for the McKinley Street and 39th Street sides of the parking lot where natural screening is not now provided.

13. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.

14. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.

15. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.

16. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such other structure is otherwise permitted in the zoning district in which the parking lot is located.

17. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting be confined to the surface of the parking lot.

18. Applicant shall install and maintain professionally lettered traffic signage indicating the entrances and exits to the lot and take all necessary actions in

working with appropriate city agencies to ensure that all public space signs prohibiting a left turn from McKinley Street are maintained. The lessee shall install appropriate signs to advise vehicle operators not to block the sidewalk.

19. With the consent of appropriate D.C. agencies, the applicant shall place a decorative boulder, or some equally sturdy deterrent, in the ruts adjacent to the McKinley Street entrance to the lot, or improve this area with a permanent surface so that ruts do not develop when vehicles traverse the area.

20. All suppliers and vendors shall be directed to deliver to the store between the hours of 8:00 p.m. and 6:00 a.m. daily and Sunday to load or unload, and to deliver only through the Connecticut Avenue entrance and not from the lot or the adjacent alley.

21. Improvements shall be made, as necessary, for the outflow of traffic from the lot onto 39th Street so that trucks exiting do not cross the west curb of 39th Street. Magruder's shall widen the concrete apron at its expense, after securing the necessary D.C. government permits, if other methods of traffic control on 39th Street are not sufficient to eliminate the passage of trucks over the west curb.

22. Snow and ice shall be removed promptly after accumulation from all sidewalks around the parking lot as well as from the front of the store.

23. The applicant shall designate at least one community liaison representative who shall meet with representatives of the neighborhood and the ANC representative for Single Member District 3G07 at least four times a year in order to mitigate the impact of the operation of the parking lot on the neighborhood. The time and place of the quarterly meetings shall be set by the ANC representative in cooperation with all affected parties. The applicant shall take and maintain minutes of the quarterly meetings and submit those minutes upon filing for a continuance of special exception.

VOTE: 5-0 (Angel F. Clarens, Susan Morgan Hinton and Laura M. Richards to grant; Maybelle Taylor Bennett and Sheila Cross Reid to grant by absentee vote).

THIS ORDER WAS ISSUED AS A PROPOSED ORDER PURSUANT TO THE PROVISIONS OF D.C. CODE SECTION 1-1509(D). THE PROPOSED ORDER WAS SENT TO ALL PARTIES ON APRIL 24, 1998. THE FILING DEADLINE FOR EXCEPTIONS AND ARGUMENTS WAS DUE BY CLOSE OF BUSINESS (4:45 P.M.) ON MAY 1, 1998. THE DEADLINE FOR RESPONSES WAS DUE BY CLOSE OF BUSINESS (4:45 P.M.) ON MAY 22, 1998. NO PARTY TO THIS APPLICATION FILED EXCEPTIONS OR ARGUMENTS RELATING TO THE PROPOSED ORDER, THEREFORE, THE BOARD OF ZONING ADJUSTMENT ADOPTS AND ISSUES THIS ORDER AS ITS FINAL ORDER IN THIS CASE.

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT – SHEILA CROSS REID, BETTY KING AND JERRILY R. KRESS.

ATTESTED BY: Sheri M. Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

FINAL DATE OF ORDER: JUL 27 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATION OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

Ord16233/POH/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16233

As Interim Director of the Office of Zoning, I certify and attest that on JUL 27 1998 a copy of the decision entered on that date in this matter before the Board of Zoning was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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Attested By: Sheri M Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

Date: JUL 27 1998

attest/ljp