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March 22, 2004

Clifford Moy
Board of Zoning Adjustment
Office of Zoning, Suite 210
441 4th Street NW
Washington, DC 20001

Re: Application by The Most Worshipful Prince Hall Grand Lodge
Application No. 17099
Hearing Date: 03/23/04

Dear Mr. Moy:

Counsel for the Mason Lodge and I have been negotiating since the hearing on March 16, but at this time have been unable to resolve one issue. Accordingly, I am here filing 13 copies of WNA's Proposed Decision. You will note that it is essentially the same as the Mason Lodge's proposed Order except for the addition of paragraph 3 in the ordering clauses.

Sincerely,

Lynn H. Johnson, Esq.
Counsel for Westminster Neighborhood Association

BZA
Case No. 17099
Exhibit No. 40

Board of Zoning Adjustment
District of Columbia
CASE NO. 17099
EXHIBIT NO. 40

Application No. 17099 of The Most Worshipful Prince Hall Grand Lodge, pursuant to 11 DCMR §3104.1, for a special exception to permit open accessory parking spaces under subsection 2116.5 in an R-4 District at premises 1902-1906 Vermont Avenue, N.W. (Square 333, Lot 827).

HEARING DATE:
DECISION DATE:

SUMMARY ORDER

PRELIMINARY MATTERS:

Self Certification: The zoning relief requested in this case was self-certified, pursuant to 11 DCMR §3113.2.

Notice of Public Hearing: The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1B and to owners of property within 200 feet of the site.

Advisory Neighborhood Commission 1B: The site of this application is located within the jurisdiction of Advisory Neighborhood Commission ("ANC") 1B, which is automatically a party to this application. ANC 1B submitted a written statement and attended the public hearing in support of this application, requesting the Board to approve the application referencing that certain Development and Interim Usage Agreement ("Agreement"), dated March 10, 2004, entered into among the Applicant, ANC 1B and the Westminster Neighborhood Association (identified below), and included in the record as Exhibit No. __. The Agreement addresses a process and timeline for redevelopment of the subject property, and also establishes specific landscape, security and maintenance requirements for the interim usage of the subject property for accessory parking by the Applicant for a period of 36 months.

Request for Party Status: The Westminster Neighborhood Association ("WNA") requested to participate as a party in this proceeding. The Applicant had no objection to the grant of party status to WNA. WNA was granted party status by the Board. While WNA's original application for party status was filed in opposition to the application, WNA withdrew its opposition and now supports the application based upon the execution of the Agreement. Consistent with the

Agreement, the WNA requests that the Board merge the Agreement into the Board's decision and order.

Report of the Office of Planning: The D.C. Office of Planning ("OP") submitted a written report and testified in support of the application based upon the following conditions:

A. Approval shall be for a period of **Three (3) years**.
B. The parking area of Lots 824, 825, and 827 shall be limited to **lot 827** with **20** parking spaces. Lots 824 and 825 shall be maintained as landscaped lots only.
C. The parking lot is for use by tenants of the building and members of the lodge only; spaces may not be used for commercial purposes.
D. The applicant shall implement the landscaping plan as submitted. The parking lot shall be maintained and landscaped as specified in its Development Interim Usage Agreement with the Westminster Neighborhood Association and ANC 1B.
E. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
F. 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.
G. All spaces shall meet code standards with respect to size and location of parking spaces as required by sections 2115 and 2116 of the Zoning Regulations.

Report of the Department of Transportation: The D.C. Department of Transportation ("DOT") submitted a written report offering no objection to the application.

Amendment of Application: the Board of Zoning Adjustment, upon request of the parties, amended the application to remove Lots 824 and 825. The Board is advised that the Applicant, ANC 1B and WNA have entered into a certain Planting Installation and Maintenance Agreement ("Planting Agreement"), which provides for the Applicant to install and maintain a landscaping buffer in Lot 825, consistent with the original plans filed in Application No. 17099.

DECISION AND ORDER

As directed by 11 DCMR §3119.2, the Board has required the Applicant to satisfy the burden of proving the elements necessary to establish the case for a special exception pursuant to §§ 3104.1 and 2116.5. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate

as a party in opposition to this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, including the Agreement and the Planting Agreement, which are attached hereto and incorporated by and merged herein, and having given great weight to the ANC's report and the Office of Planning's report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 2116.5, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board also concludes that the specific requirements set forth in 11 DCMR §§ 2116.6 through 2116.9 have been satisfied by the application. Based upon the Agreement, particularly the provisions related to the process and timeline established for development of the subject property, its enforcement provisions, and the temporary nature of the use of the property for accessory parking, the Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board supports the language and intent of the Agreement as it relates to the development of the subject property and concludes that these provisions will help assure that the use of the subject property will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

It is therefore **ORDERED** that this application be **GRANTED, subject to the following:**

1. **The conditions listed in the Office of Planning report dated February 23, 2004 and submitted to the Board on March 9, 2004, as modified below to reflect removal of Lots 824 and 825 from application, namely:**

    A. Approval shall be for a period of **Three (3) years**.
    B. The parking area shall be limited to **20** parking spaces.
    C. The parking lot shall be for use by tenants of the building and members of the lodge only; spaces may not be used for commercial purposes.
    D. The applicant shall implement the landscaping plan as submitted. The parking lot shall be maintained and landscaped as specified in its Development Interim Usage Agreement with the Westminster Neighborhood Association and ANC 1B.
    E. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
    F. 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.

G. All spaces shall meet code standards with respect to size and location of parking spaces as required by sections 2115 and 2116 of the Zoning Regulations.

2. ***The additional conditions under our jurisdiction and as set forth in the Development and Interim Usage Agreement, dated March 10, 2004, entered into among the Applicant, ANC 1B and the WNA, namely:***

A. Use Restrictions -- The interim use of the Vermont Avenue Property as an accessory parking lot shall be subject to the following parameters:

i. The parking lot shall be limited to a maximum of 20 parking spaces, with a minimum of 2 spaces for handicapped parking, as shown in the drawings approved by the BZA in its approval of Application No. 17099 and attached hereto;

ii. All parking spaces shall meet applicable standards with respect to size and location as set forth in §§ 2115 and 2116 of the Zoning Regulations (11 DCMR);

iii. Consistent with §2303.1 of the Zoning Regulations, the parking lot shall be designed so that no vehicle or any part of a vehicle projects over any lot line or building line;

iv. The parking lot shall be reserved for the exclusive use of the Lodge, its members, and tenants of the Prince Hall Masonic Temple and no spaces shall be used for any commercial purposes.

B. Landscaping -- During its interim use as a parking lot, the Vermont Avenue Property shall comply with the following landscaping requirements:

i. A row of thickly-planted evergreen hedges at least twelve (12) inches thick and forty-two (42) inches high shall be planted and maintained along the east (except for the driveway) and south sides, and along the alley from 11th Street to and including along the locked gate on the north side of Lot 827. The hedges shall be planted so as to hide from view the chain link fence enclosing the parking lot. The hedges shall also be of sufficient thickness to effectively contain and screen any significant light from automobile headlights from shining outside the perimeter of the parking lot. The hedges shall be maintained so as not to grow above fifty (50) inches high;

ii. Landscaping with trees and shrubs shall cover a minimum of five (5) percent of the total area of the Vermont Avenue Property. The landscaping discussed herein shall be purchased

and planted within ninety (90) days of oral approval by the BZA of Application No. 17099. The Lodge shall solicit and consider the input of the WNA and ANC 1B with respect to the landscaping materials to be chosen;

iii. The Lodge shall retain the services of a qualified, reputable, professional, and licensed company for the purchase, installation, and continual maintenance of the landscaping herein noted. The retention of the landscaping professional shall occur within 60 days of oral approval by the BZA of Application No. 17099. The landscaping chosen and planted shall be maintained in a healthy growing condition and in a neat and orderly appearance.

C. Maintenance -- During its interim use as a parking lot, the Vermont Avenue Property shall comply with the following maintenance standards:

i. All areas of the parking lot devoted to driveways, access lanes and parking areas shall be paved and maintained so as to form an all-weather impervious surface;

ii. All parts of the parking lot and surrounding area shall be kept free of refuse and debris. This area shall include the sidewalks surrounding the parking lot and leading from the parking lot to the Prince Hall Masonic Temple, and that portion of the public alley abutting the parking lot;

iii. The Lodge shall implement a written plan for trash and debris removal from the parking lot and surrounding area and provide a copy of same to the WNA and ANC 1B within 30 days of days of oral approval by the BZA of Application No. 17099. Such plan shall address removal of "bulk trash" which may be dumped on the Vermont Avenue Property, the frequency of trash removal and the collection of litter from the sidewalks immediately adjacent to the Vermont Avenue Property;

iv. At least one trash receptacle shall be installed in the parking lot for the use of those utilizing the parking lot and shall be emptied on a regular basis. Such receptacle(s) should be aesthetically consistent with the historic character of the neighborhood and shall be installed within 30 days of days of oral approval by the BZA of Application No. 17099;

v. All snow shall be cleared from the sidewalks along the east and south sides of the parking lot within 8 hours after the snow stops falling. The Lodge shall retain the advance services of a snow removal company which, on a consistent and reliable basis, shall provide for the timely removal of snow from these sidewalks.

D. Security and Traffic Control – During its interim use as a parking lot, the Vermont Avenue Property shall comply with the following security standards:
   i. The Lodge shall implement a written plan within 30 days of oral approval by the BZA of Application No. 17099 for regular and periodic security monitoring of the parking lot. The WNA and ANC 1B agree to assist in this security effort by requesting their members to periodically monitor the surrounding property for illegal and otherwise suspicious activity;
   ii. All illumination of the parking lot shall be so configured to confine direct rays exclusively to the Vermont Avenue Property;
   iii. The Lodge shall remind its membership at least quarterly, through regular announcements, leaflets and other means, that the Vermont Avenue Property is located within a residential area and that users of the parking lot should keep horn-honking, other noise, including conversations at the parking lot, and use of headlights to a minimum;
   iv. The Lodge shall encourage its membership at least quarterly, through regular announcements, leaflets and other means, to utilize Metrorail or other public transportation to the Prince Hall Masonic Temple;
   v. The Lodge shall erect a sign to be seen upon exiting the parking lot, which sign shall inform users of the parking lot not to enter the parking lot from the northbound lanes of Vermont Avenue.

3. The following condition:

Solely with respect to the arbitration provision in the Development and Interim Usage Agreement, dated March 10, 2004, and entered into among the Applicant, ANC 1B and the WNA, if the Lodge fails to comply in good faith with the arbiter's decision and any party brings suit or any other action to enforce the arbiter's decision, reasonable costs of such action, including attorneys fees, shall be paid by the losing party to the successful party. This paragraph does not apply to ANC 1B.

Pursuant to 11 DCMR §3100.5, the Board has determined to waive the requirement of 11 DCMR §3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

VOTE: — ( )

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
Jerrily R. Kress, FAIA
Director

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR §3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR §3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR §3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25. *SEE* D.C. CODE §1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.