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July 6, 2004

CHRISTOPHER H. COLLINS
202-457-7841
Internet Address:
chris.collins@hklaw.com

VIA HAND DELIVERY

Members of the Board of Zoning Adjustment
District of Columbia Office of Zoning
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: **Board of Zoning Adjustment Case No. 17165**
Motion For Reconsideration of Condition

Dear Board Members:

On behalf of the applicant in the above-referenced case, enclosed please find an original and twenty copies of its Motion For Reconsideration of Condition imposed in Board of Zoning Adjustment Order No. 17165.

Should you have any questions regarding this matter, please do not hesitate to contact me at (202) 457-7841.

Sincerely,

Christopher H. Collins, Esq.

Enclosure

cc: Travis Parker, Office of Planning (Via First Class Mail, w/enclosure)
Joan Black, Advisory Neighborhood Commission 5B (Via First Class Mail, w/enclosure)
Ken Laden, District Department of Transportation (Via First Class Mail, w/enclosure)
Herbert Reynolds, Public Storage, Inc. (Via First Class Mail, w/enclosure)
Kyrus L. Freeman (w/enclosure)

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BZA
Case No. 17165
Exhibit No. 34

Board of Zoning Adjustment
District of Columbia
CASE NO. 17165
EXHIBIT NO. 34

BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF 1600 BLADENSBURG ROAD L.L.C. AND 1618 BLADENSBURG ROAD L.L.C. ON BEHALF OF PUBLIC STORAGE, INC.

BZA APPLICATION NO. 17165

HEARING DATE: JUNE 8, 2004
DECISION DATE: JUNE 22, 2004

MOTION FOR RECONSIDERATION OF CONDITION

The Board of Zoning Adjustment approved the application for parking and loading variances in this case by Order dated June 23, 2004. The Order approving the application was served on the parties by first class mail on that date. In that Order, the Board included a condition limiting the number and location of signs on the east and south facades of the building. Pursuant to 11 DCMR §3126.2, the Applicant respectfully requests reconsideration of this condition.

I.
Factual and Procedural Background

On March 11, 2004, Public Storage, Inc. (the "Applicant") filed an application with the Board of Zoning Adjustment (the "Board"), pursuant to 11 DCMR §3103.2, for variance relief from the off-street parking requirements (§2101.1) and the loading requirements (§2201.1) of the Zoning Regulations. The relief was requested in connection with the construction and operation of a three-story self-storage facility at property located at 1600-18 Bladensburg Road, N.E., Lots 3 and 4 in Square 4273 (the "Site").

The Applicant submitted a prehearing statement and presented testimony and evidence in the record and at the public hearing on June 8, 2004 supporting the requested parking and loading variance relief, including testimony and documentary evidence by Mr. Mark Joyce of Bohler Engineering, the project engineers, and by Mr. Osborne George of O.R. George and Associates, the Applicant's transportation consultants. Mr. George was accepted by the Board as an expert witness on the parking and loading issues, and testified as such.

The ANC, which is automatically a party to the application, did not take a vote on the application due to lack of a quorum at two successive ANC meetings. However, the Chair of ANC 5B, Ms. Joan Black, who is also the Single Member District Commissioner of ANC 5B09, in which the Site is located, submitted a letter fully supporting the proposed project and strongly recommending approval of the requested relief. Ms. Black noted that the Applicant worked with her to ensure that the community understood the project, and that there were no issues of concern or negative feedback raised by the community concerning the project.

The Office of Planning filed a report recommending approval of the requested parking and loading variances, finding that the Applicant met the three part test for variance relief for both parking and loading. The District Department of Transportation also filed a report concurring with the Applicant's grounds for the requested parking and loading variance relief. There were no parties or persons in opposition to the project, either of record or at the public hearing.

At the close of the public hearing on June 8, 2004, the Board requested that the Applicant submit architectural drawings indicating the proposed concept signage plan for the building, and photographs indicating the views of the subject site from various vantage points in the vicinity, including the National Arboretum and the Mt. Olivet Cemetery. As shown on the attached drawing (Exhibit 31of the Record, attached hereto at Tab A), the Applicant proposed to place four signs on the east elevation, facing Bladensburg Road and the National Arboretum, measuring a total of no more than 178 square feet at a point no higher than the top of the second floor level. The Applicant further proposed to place two signs on the south elevation, facing the parking lot, measuring a total of no more than 100 square feet. The photographs included with the post-hearing submission demonstrate that the signs proposed to be located on the east and south elevations of the proposed building would not be readily visible from or have an adverse impact on views from either the National Arboretum or Mt. Olivet Cemetery. There is no evidence of record that refutes this conclusion.

On June 22, 2004, at a special public meeting, the Board found and concluded, based upon the evidence and testimony of record, including the expert testimony by Mr. George, that the Applicant met the burden of proof for parking and loading variance relief, and voted to grant the application, subject to the following condition:

> There shall be no more than one sign on the east elevation of the building and no more than one sign on the south elevation of the building. These two signs shall be above the entrance at the southeast corner of the building,

at the top of the first floor level, as shown on Sheet A-5 (Exhibit No. 31 of the Record).

See Board of Zoning Adjustment Order No. 17165, attached hereto at Tab B.

At the June 22nd public meeting, the Board member who proposed the condition governing the number and location of the signs indicated that the condition was intended to ensure that there would be "no adverse impact" from the granting of the parking and loading variances.

The use of the property as a warehouse is permitted as a matter of right. The proposed building meets all of the applicable Zoning Regulations and limitations, except for parking and loading. The signs proposed by the Applicant are permitted as a matter of right under the Building Code and are not otherwise regulated by the Zoning Regulations. The condition imposed by the Board in this case bears no relation to the parking and loading variances that were granted by the Board, nor is there any substantial evidence in the record supporting the need for such a condition. As detailed below, the Applicant requests that the Board remove this condition, or in the alternative, replace the condition with the following:

> Signage on the east and south elevations of the building shall be as shown on Sheet A-5 (Exhibit No. 31 of the Record).

II.
Argument

A. Jurisdiction of the Board

The Board's jurisdiction in a variance application is limited to determining whether the applicant has met its burden of proof for the requested variance relief. Once the Applicant meets its burden, the Board is required to grant the requested

relief. Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

> (1) the property is unusual because of its size, shape or topography or other extraordinary or exceptional situation or condition;
>
> (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
>
> (3) the requested variance relief would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (*quoting Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also*, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). The record is clear that the Applicant met its burden for proof for the requested variance relief in this case, and the Board so concluded. There is no dispute as to any material fact concerning any of the evidence presented in this case demonstrating the Applicant's compliance with the burden of proof for parking and loading variance relief.

The Zoning Regulations do not govern the size or location of signs on proposed buildings in conjunction with a parking or loading variance application.[1] The permitted location and size of signs on buildings is governed by the D.C. Construction Codes 2003 Supplement, 12 DCMR, Chapter 31 (the "Building Code").

[1] Other provisions of the Zoning Regulations do specifically allow the Board to condition an approval for aesthetic purposes. For instance, 11 DCMR §508.5 allows the Board to impose "special treatment in the way of design, screening of buildings, accessory uses, signs, and other facilities as it deems necessary to protect the value of neighboring property" in conjunction with a special exception for an office use in the SP zone.

The signage is permitted to be placed on the Bladensburg Road frontage (east elevation) of the Applicant's proposed building pursuant to Section 3107.10.4, and on the south elevation facing the parking lot, pursuant to Section 3107.7.7.2. The maximum permitted size of the sign facing Bladensburg Road is 1/40th of the area of the wall. The wall measures 7,142 square feet in area. Therefore, the maximum permitted size of the sign facing Bladensburg Road is 178.55 square feet. The south wall, facing the parking lot, measures less than 4,000 square feet in size. Therefore, the maximum permitted size of the sign facing the parking lot is limited to 100 square feet.

The Applicant's proposed signage plan is within the Building Code's requirements. However, the Board improperly limited the Applicant to locating only one sign on the east elevation of the building and one sign on the south elevation of the building, above the entrance at the southeast corner of the building, at the top of the first floor level. This condition is beyond the Board's jurisdiction, and as discussed below, is not based on any evidence in the record.

B. Legal Requirement for the Imposition of Conditions

Although the Board may impose reasonable conditions to the granting of variances, the conditions imposed must relate directly to the zoning relief being requested, and not merely to the business decisions of the Applicant. *See National Black Child Development Institute*, 483 A.2d at 691 ("Personal conditions impermissibly regulate the business conduct of the owner, rather than the use of his property, and are unlawful, *per se*."). With respect to the requirements for placing

conditions on orders, both E.C. Yokley, Zoning Law and Practice, §21-12 (4th ed. 1979) and Kenneth H. Young, Anderson's American Law of Zoning, §20.71 (4th ed. 1996) cite the case of *Bora v. Zoning Board of Appeals of Norwalk*, 288 A.2d 89 (Conn. 1972) where the Supreme Court of Connecticut held that the grant ofa parking variance for use of a property as a café cannot include a condition that the café be operated only between the hours of 5:00 p.m. and 1:00 a.m. Similarly, in this case, the Board should not impose a condition on the parking and loading variances that is unrelated to the parking and loading relief.

Even assuming, *arguendo*, that the size and location of signs can be regulated by the Board pursuant to the Board's power to grant parking and loading variances, the law is clear that any conditions imposed by the Board must be supported by substantial evidence in the record of the case. *See National Black Child Development Institute v. District of Columbia Board of Zoning Adjustment*, 483 A.2d 687, 692 (D.C. 1984); *see also, Foggy Bottom Association v. District of Columbia Board of Zoning Adjustment*, 791 A.2d 64 (D.C. 2002).

The D.C. Court of Appeals has held in numerous cases that conditions imposed by the Board must relate to specific findings, which in turn must be based upon "reliable, probative, and substantial evidence in the record as whole." E.g., *National Black Child Development,* at 692. Moreover, "[t]he substantial evidence test requires that an agency make factual findings which are rationally related to the evidence presented, i.e., that there be substantial support in the evidence for the factual findings." *Foggy Bottom Association,* 791 A.2d at 74. For example, in

National Black Child Development, the Court remanded a variance case since, inter alia, the Board imposed a condition without hearing evidence that supported the imposition of the condition, and the record did not otherwise demonstrate the need for the condition. 483 A.2d at 692. In contrast, the Court in *Foggy Bottom Association* upheld conditions placed in a special exception order relating to the new George Washington University hospital. The conditions limited the hours when deliveries to the hospital can occur. The Court found in that case that "[t]he BZA received a great deal of evidence on these matters and, after undertaking a detailed review of that evidence, concluded that the conditions it imposed were sufficient to ensure that the proposed new [George Washington University] hospital would not create objectionable conditions." 791 A.2d at 75.

In this parking and loading variance case, there is no evidence of record to support the imposition of limits on the size and location of signs on the Applicant's proposed building. There is no evidence of record indicating that the granting of the requested parking and loading variances necessitated a condition limiting the number and placement of signs on the building, or that there is any connection whatsoever between the parking and loading variances and the condition on signage.

To the extent that the Board imposed the condition on the variance relief in order to protect views from the National Arboretum and the Mt. Olivet Cemetery, then assuming that this was a proper exercise of the Board's power, which the Applicant does not concede, the only evidence of record demonstrates that the signs

proposed to be located on the east and south elevations of the proposed building would not be readily visible from either the National Arboretum or Mt. Olivet Cemetery. There is no evidence of record that contradicts or refutes this fact. Moreover, the imposition of conditions concerning signage in this case is not related to the requested relief, i.e., a variance from the off-street parking requirements and the loading requirements of the Zoning Regulations, nor can the Board reasonably make a finding or draw a conclusion in this case that ties together the need for a signage condition based upon the parking and loading variances for this matter of right warehouse use.

III.
Conclusion

For the reasons stated above, the Applicant respectfully requests that this Motion for Reconsideration of Condition be granted, and that Board remove the condition imposed in Order No. 17165, or in the alternative, that the Board replace the condition imposed in Order No. 17165 with the following condition:

> Signage on the east and south elevations of the building shall be as shown on Sheet A-5 (Exhibit No. 31 of the Record).

Respectfully submitted,

HOLLAND & KNIGHT, LLP

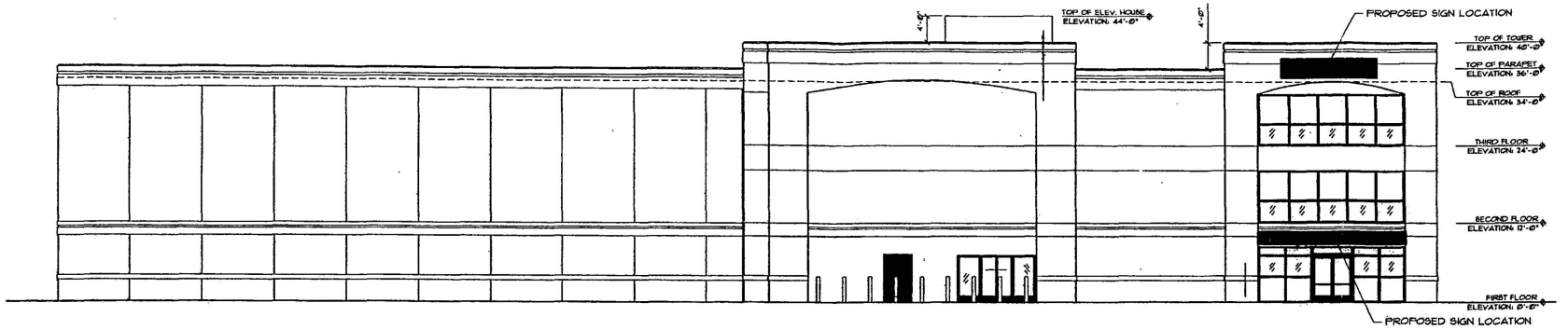
By: _____
Christopher H. Collins, Esq.

By: _____
Kyrus L. Freeman, Esq.*

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*Admitted only in Pennsylvania; supervision by principals of the firm who are members of the D.C. Bar

A



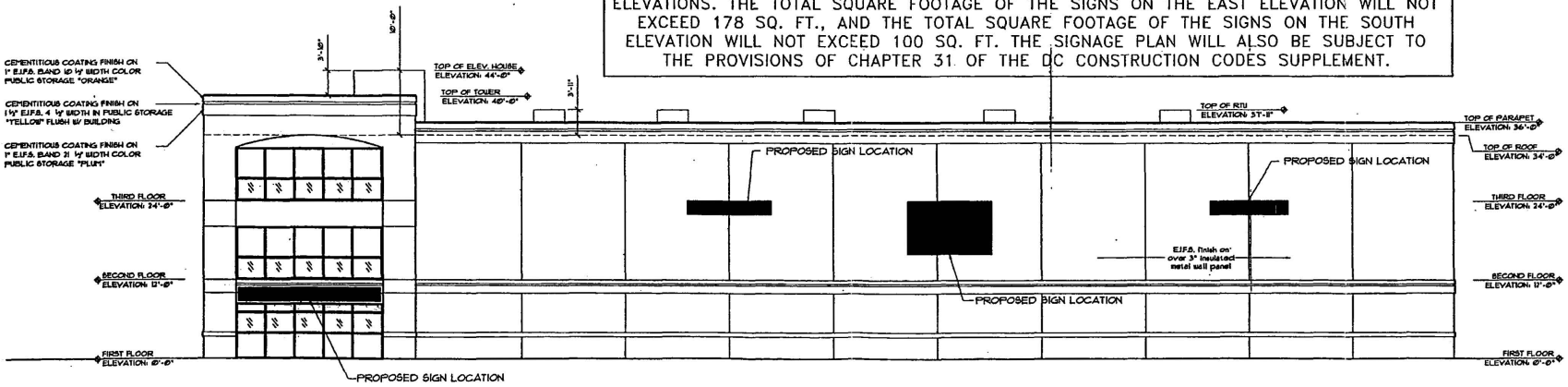
WEST ELEVATION (ANGLED AWAY)

SCALE: 1/8" = 1'-0"

SOUTH ELEVATION

SCALE: 1/8" = 1'-0"

THIS CONCEPTUAL SIGNAGE PLAN IS FOR ILLUSTRATIVE PURPOSES ONLY AND IS BASED UPON PRELIMINARY PLANS PROVIDED BY PUBLIC STORAGE INC. THE PLAN ILLUSTRATES THE MAXIMUM NUMBER AND MAXIMUM HEIGHT OF THE PROPOSED SIGNS ON THE SOUTH AND EAST ELEVATIONS. THE TOTAL SQUARE FOOTAGE OF THE SIGNS ON THE EAST ELEVATION WILL NOT EXCEED 178 SQ. FT., AND THE TOTAL SQUARE FOOTAGE OF THE SIGNS ON THE SOUTH ELEVATION WILL NOT EXCEED 100 SQ. FT. THE SIGNAGE PLAN WILL ALSO BE SUBJECT TO THE PROVISIONS OF CHAPTER 31 OF THE DC CONSTRUCTION CODES SUPPLEMENT.



EAST ELEVATION - BLADENSBURG ROAD

SCALE: 1/8" = 1'-0"

CLIENT DATA: Public Storage

REVISIONS

NO	BY	DESCRIPTION	DATE
1	FAC	ADDED ROOF PLAN	3/26/08
2	FAC	ADDED ROOF EQUIPMENT TO ELEVATIONS	

REVISIONS

NO	BY	DESCRIPTION	DATE
3	FAC	ADDED ADDITIONAL ELEVATIONS	5/19/08

REVISIONS

NO	BY	DESCRIPTION	DATE

BOHLER ENGINEERING

PROJECT LOCATION: 3-STORY PUBLIC STORAGE FACILITY
1600, 1608 BLADENSBURG RD. N.E. WASHINGTON, D.C.

TITLE: PROPOSED CONCEPT SIGNAGE PLAN

PROJ. NO.	P00000
DATE	05/27/08
CAD ID.	elevation-1
DRAWN BY	FAC
CHK BY	COALTER
SCALE	AS NOTED

A-5

REVISION 3

B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Application No. 17165 of Public Storage, Inc., pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, and a variance from the loading requirements under subsection 2201.1, to permit the development of a three story self-storage facility in the C-M-1 District at premises 1600-18 Bladensburg Road, N.E. (Square 4273, Lots 3 and 4).

HEARING DATE: June 8, 2004
DECISION DATE: June 22, 2004

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 5B, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 5B. The ANC 5B single member district representative submitted a letter in support of the application. The OP submitted a report recommending approval of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 2101.1 and 2201.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and 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.

Pursuant to 11 DCMR § 3101.6, 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 not prohibited by law. It is therefore **ORDERED** that this application be **GRANTED** with the following **CONDITION:**

1. There shall be no more than one sign on the east elevation of the building and no more than one sign on the south elevation of the building. These two signs shall be above the entrance at the southeast corner of the building, at the top of the first floor level, as shown on Sheet A-5 (Exhibit No. 31 of the Record).

VOTE: **4-0-1** (John G. Parsons, Ruthanne G. Miller, John A. Mann, II, and Curtis L. Etherly, Jr. to approve, Geoffrey H. Griffis not voting, not having heard the case).

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

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

FINAL DATE OF ORDER: JUN 23 2004

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

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

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY

OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

BZA APPLICATION NO. 17165

As Director of the Office of Zoning, I hereby certify and attest that on JUN 2 3 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Christopher H. Collins, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006

Chairperson
Advisory Neighborhood Commission 5B
1355 New York Avenue, N.E.
Washington, D.C. 20002

Single Member District Commissioner 5B09
Advisory Neighborhood Commission 5B
1355 New York Avenue, N.E.
Washington, D.C. 20002

Vincent Orange, City Councilmember
Ward Five
1350 Pennsylvania Avenue, N.W.
Suite 108
Washington, D.C. 20004

Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of Corporation Counsel
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2004, a true and correct copy of the foregoing Motion for Reconsideration of Condition was served on the parties below, as indicated:

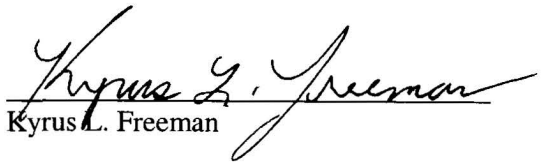
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District of Columbia Office of Zoning
441 4th Street, NW
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Washington, DC 20001
(Via Hand Delivery)

Advisory Neighborhood Commission 5B
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Washington, DC 20002
(Via First Class Mail)

Joan Black
2401 Rand Place, NE
Washington, DC 20002
(Via First Class Mail)

Travis Parker
District of Columbia Office of Planning
801 North Capitol Street, NE, 4th Floor
Washington, DC 20002
(Via First Class Mail)

Kenneth Laden
Associate Director for Transportation Planning
District Department of Transportation
2000 14th Street, NW
Washington, DC 20009
(Via First Class Mail)



Kyrus L. Freeman

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