GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17175-A of Douglas Development Corp./Jemal's Wheel LLC, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure requirements under section 411, and a special exception to increase the building height to 50 feet pursuant to section 1402, and pursuant to 11 DCMR § 3103.2, variances from the lot occupancy requirements under section 772, the residential recreation space requirements under subsection 773.3, the side yard requirements under subsections 775.5 and 2001.3, and the parking aisle width requirements under subsection 2117.5, to permit the development of a 4 story apartment house in the RC/C-2-B District at premises 1701 Kalorama Road, N.W. (Square 2566, Lot 90).

HEARING DATE: June 29, 2004
DECISION DATE(S): July 6, 2004, July 13, 2004, August 3, 2004

Note: The application as filed requested a variance from Section 773.7, the dimensional requirements for residential recreation space on a roof. Due to refinements in the plans and the Board's decision to require residential recreation space on the roof as set forth in the condition to this Order, the Board granted a variance from Section 773.3, the amount of residential recreation space provided, but not a variance from the dimensional requirements of Section 773.7. This further resulted in the Board granting roof structure relief to allow multiple roof structures, roof structures having walls of unequal height and one roof structure not meeting the setback requirement from a side wall of the building.

CORRECTED SUMMARY ORDER*

* Note - This order corrects a typographical error found in BZA Order No. 17175. The description of the application incorrectly stated the square number involved in the application. This order fixes the mistake by correctly stating the Square number as 2566 (underlined above).

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 the Applicant, Advisory

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17175-A
EXHIBIT NO. 36

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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 appropriate in this case.

VOTE: 3-0-2 (Geoffrey H. Griffis, John A. Mann II and Ruthanne G. Miller to approve, Curtis L. Etherly, Jr., and the Zoning Commission member not voting not having heard the case).

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

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

FINAL DATE OF ORDER: NOV - 5 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

Neighborhood Commission (ANC) 1C, and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning (OP). The OP submitted a report in support of the application. The subject property is located within the jurisdiction of ANC 1C. ANC 1C submitted a letter in support 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 special exception pursuant to 11 DCMR §§ 3104.1, 411and 1402, and variances under 11 DCMR § 3103.2 from the strict application of the requirements of §§ 772, 773, 775, 2001.3, and 2117.5.

No party appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the Office of Planning and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proof pursuant to 11 DCMR § 3104.1, for a special exception under section 411 and 1402, that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board also concludes that the applicant has met its burden of proof under 11 DCMR §§ 3103.2, 772, 773, 775, 2001.3 and 2117.5, 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 requested 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. The Board further concludes that the practical difficulty associated with providing residential recreation space on the roof of the building comes from the difference between the Building Code requirements for the width of the stairs required to serve the number of units in the building and the width required to provide egress from the roof for the number of people who could be accommodated in the amount of space required by Section 773.3. It is therefore **ORDERED** that the application is **GRANTED, SUBJECT** to the **CONDITION** that the roof deck shall contain residential recreation space on the maximum square footage permitted under the Building Code within the limit of the minimum width of the stairs meeting the occupancy load for the 48 unit residential use of the building.

§ 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.