1. The facility shall be open five days per week for regular daily visits. Sundays are not to be included in this schedule.

2. The hours of operation for regular daily visits shall be from 8:30 a.m. to 6:00 p.m.

3. A maximum of 250 persons shall be allowed to visit the site each day of regular operation.

4. A maximum of 50 persons shall be allowed inside of the museum at any one time.

5. Visitors shall be admitted by appointment only.

6. All parking shall occur on the premises.

7. The applicant shall be allowed to have a maximum of 16 educational evening activities per year.

8. The educational evening activities shall end no later than 10:00 p.m.

9. The applicant shall be allowed to have four Sunday afternoon events in the first year, with one additional event being added each year with an ultimate maximum of ten Sunday afternoon events.

10. A maximum of 100 persons shall be allowed to attend each Sunday afternoon event.

11. The applicant shall be allowed to have one annual fundraiser.

12. No more than 350 people shall be allowed to attend the annual fundraiser.

13. No amplified outdoor concerts shall be allowed at the site.

14. The applicant shall establish a liaison committee made up of the ANC, area residents and institutions to coordinate the activities of the applicant's facility and nearby institutions. The committee shall meet at least quarterly to resolve any problems raised by its members.

15. No outside groups or individuals shall be allowed to rent the applicant's facility.

16. The applicant shall provide security at the site 24 hours a day, seven days a week.

Board of Zoning Adjustment
District of Columbia
CASE NO. 17229
EXHIBIT NO. 6A2

17. A "No right turn" sign shall be installed at all vehicular exits from the site.

18. The applicant shall request that visitors exit from the facility toward Tilden Street.

19. All construction equipment, supplies and parking shall be located within the boundaries of the applicant's site.

VOTE: 4-0 (Susan Morgan Hinton, John G. Parsons, Laura M. Richards, and Craig Ellis to grant; Angel F. Clarens not voting, having recused himself).

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

ATTESTED BY: Madeliene H. Dobbins
Madeliene H. Dobbins
Director

Final Date of Order: OCT 26 1995

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 SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ord16019/TWR/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16019

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on OCT 26 1995 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Whayne S. Quin, Esquire
Wilkes, Artis, Hedrick and Lane
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Madeliene H. Dobbins

MADELIENE H. DOBBINS
Director

DATE: OCT 26 1995

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16019 of the Marjorie Merriweather Post Foundation of the District of Columbia, pursuant to 11 DCMR 3107.2, for a variance (Subsection 201.1) to allow additions to and modifications of existing structures, new construction and modification of certain conditions of previous Board orders governing the operation of an approved museum in an R-1-A District at premises 4155 Linnean Avenue, N.W. (Square 2245, Lot 800).

HEARING DATE: January 18, 1995
DECISION DATE: March 1, 1995

DISPOSITION: The Board **GRANTED** the application with conditions by a vote of 4-0 (Susan Morgan Hinton, John G. Parsons, Laura M. Richards and Craig Ellis to grant; Angel F. Clarens not voting, having recused himself)

FINAL DATE OF ORDER: October 26, 1995

RECONSIDERATION ORDER

The Board granted the application, subject to 19 conditions, by its final order dated October 26, 1995. By letter dated November 7, 1995, an opponent to the application (movant herein) filed a motion for reconsideration of the Board's decision. The movant assigns error to the Board's decision in three main respects: (a) The Board applied an incorrect legal standard in granting the use variance; (b) There is an inadequate factual record to allow an increase in the operating hours or to allow Sunday events, and (c) The Board did not give great weight to the ANC's recommendation of no Sunday events.

A. The Undue Hardship Standard

The movant argued that this is a use variance case where the applicant must show that it faces an undue hardship if the relief is denied. The movant argued that the Board erred in relying on the will of Marjorie Merriweather Post to justify the use of the property because to do so would amount to a self-created hardship on the part of the applicant.

The movant also argued that in the case where the museum use was initially granted, the applicant did not assert the terms of the will as justification. Therefore, the Board should not rely on the will in the subject case.

The movant argued that the Board's initial grant of the application does not automatically extend that use variance to future applications for variance relief, nor does it modify the test that applies in these applications.

The movant maintains that the Hillwood Museum enjoys vast wealth and would not suffer undue hardship or a practical difficulty if the variance relief were to be denied. In the movant's view, it is simply the desire of the applicant to expand. Expansion is not necessary. Thus the Board erred when it stated that the use has been established and the proposed additions, new construction and operating changes are necessary for the continued viability of the Museum's use (BZA Order No. 16019, p. 21).

By letter dated November 17, 1995, counsel for the applicant (respondent) filed a statement in opposition to the motion. On the use variance issue, the applicant noted that in BZA Order No. 12297, as made permanent by BZA Order No. 13668, the Board granted a use variance for the subject property to be used as the Hillwood Museum. Contrary to the assertions made by the movant, a use variance runs with the land. The applicant only needs to comply with the conditions which also run with the land under the Court of Appeals decision in National Black Child Development, Institute, Inc. v. District of Columbia Board of Zoning Adjustment, 483 A.2d 687 (D.C. 1984). Therefore, Hillwood is not required to re-establish the basis for granting the underlying use variance each time a change in operating conditions is sought.

The respondent asserts that in the subject application, it sought changes to certain operating conditions that have become too restrictive given the demands of operating a public, nonprofit museum in the 1990s. The conditions originally included in the Board's 1977 order were added to ensure that its grant of the use variance met the third part of the variance test - that there would be no harm to the public or zone plan. Accordingly, in modifying these conditions pursuant to National Black Child Development, the applicant needs to address only the third part of the variance test regarding impact. The first two parts of the test were satisfied in the original order granting the use variance to allow the operation of a museum on the site.

The respondent maintains that the movant's legal argument has been specifically raised and rejected by the Board at the hearing. The motion presents no additional reasons for the Board to reconsider its ruling on the legal standard governing its decision regarding the Hillwood.

(B) The Factual Record

The movant maintains that the factual record does not support the Board's conclusion that the museum's application satisfied the

"undue hardship" burden as it relates to an increase in the hours of operation and the allowance of Sunday events. The applicant only showed a preference for more hours and the ability to serve more people. There was no evidence to demonstrate that the museum needed these changes for financial reasons in order to continue operating. She further argued that there is evidence that the Hillwood's immediate neighbors oppose the request to hold events for 100 people on Sundays. Neither the Department of Public Works nor the museum's traffic consultant seriously considered or studied the potential impact of weekend traffic during Sunday events.

Finally, the movant argued that because the Board approved the Levine School application after granting the variance in Hillwood, the Board should reconsider its decision in the instant case. The movant believes that the two institutions operating in such close proximity to one another will have an adverse affect on the community.

The respondent stated that the changes requested in this application are based on the museum's long history of operation under the current restrictions. These years of experience combined with the long-range plan have provided a strong and well-reasoned basis for the requested changes. It was also noted that Hillwood substantially modified several of the initially requested conditions to address community concerns.

With regard to Sunday events, the respondent made note of the movant's argument that there is no factual support for finding that Sunday events will not have an adverse impact on the zone plan. In response to this position, the respondent stated that the current BZA conditions do not prohibit Sunday functions. Under the original conditions, Hillwood is permitted to operate on Saturdays and Sundays as long as it is only open a total of five (5) days a week. Thus, the change was not requested to permit use of the museum on Sundays since that was already allowed. Hillwood is essentially seeking to expand the number of days during the week that the museum may operate. The Board's order addresses the rationale for Sunday events (Finding No. 7), the screening of the site to mitigate any impacts (Finding No. 5), and traffic and parking concerns (Finding Nos. 11, 12, 13, 14 and 15). The Board also found that the matter of right development would have far greater impacts than the museum use (Finding No. 17). The Board also specifically conditioned the Sunday events to minimize any impacts. Therefore, the respondent argued that the Board need not reconsider its decision on this issue.

(C) Great Weight to the ANC

The moving party argued that the Board failed to give "great weight" to the ANC's recommendation that no events should be permitted on Sundays. She stated that the ANC proposed the

following condition related to the museum's request for increased hours of operation:

> "The museum shall be made available to the public no more than five days a week, retaining the present schedule of Tuesday through Saturday."

She stated that the Board failed to discuss with specificity its rationale for rejecting the ANC's recommendation that the museum should be closed to the public on Sundays.

The respondent stated that the Board carefully considered the ANC's recommendation and the opposition of the movant as well. The Board addressed those concerns by crafting conditions designed to minimize any impacts from Sunday events. For example, Condition No. 9 allows for four Sunday afternoon events in the first year with one additional event being added yearly. Condition No. 10 limited the number of persons who can attend Sunday events to 100. Condition No. 6 requires all parking to be on the premises and Condition No. 13 prohibits amplified outdoor concerts. The respondent stated that all of these conditions serve to mitigate any adverse impacts on the area. Therefore, the Board addressed the ANC's concerns by adequately conditioning Sunday events.

(D) Impact on the Community vs. Viability of the Museum

The movant maintains that the museum will be viable without the Sunday events, but allowing the Sunday events will impair the zone plan by destroying the residential character of the neighborhood. She noted that the Hillwood can come back to the Board at a later date once it has held special events while the Levine School is operating and impacts can be assessed. Then the museum might be able to assert with particularity the demand for such events and the neighborhood will have had experience with the manner in which the museum has conducted its increased operations.

The respondent is of the view that the need for the operational changes has been established and the Board's conditions will limit the impact on the neighborhood.

The Board's Analysis

The Board has considered the record in the application, its final order, the motion for reconsideration and the response. In reviewing the order in this case, the Board notes that Condition No. 1 provides as follows: "Use of the property is subject to the terms of the previous owner's will which requires that the museum operate at the site." The Board concludes that the motion for reconsideration is based in part on this finding which addresses the basis for use of the site. The Board concludes that in analyzing the subject application, its focus was not on establish-

ing the underlying museum use. It is the Board's view that this use was previously established with a use variance in BZA Application No. 12297 and 13668. The Board viewed the instant application as one where a long-standing use seeks changes in its operations rather than one where a new use is being sought. The Board concludes that it is unnecessary to consider the museum as if it were a new use because the previously approved use variance runs with the land. The Board finds that evidence of the will was not introduced at the hearing in this application and that the finding related to the will is erroneous. However, because the Board had a separate and adequate basis (addressed below) for granting the application, it considers Finding of Fact No. 1 to be harmless error.

In deciding the subject application on the issues raised in the motion, the Board considered all of the evidence submitted by the applicant and opposing parties on extended operations and Sunday events. The Board determined that the applicant established hardship by demonstrating that it is unable to meet the growing public demand for the facility and that it needs to make changes to comply with the Americans with Disabilities Act. The Board concludes that it carefully crafted specific conditions to address the concerns of opposing parties and limit the impact of the expanded use on the community. The Board finds that while the movant continues to oppose the application, she alleges no error that would warrant reconsideration by this Board. Therefore, the motion for reconsideration is DENIED.

VOTE: 4-0 (John G. Parsons, Susan Morgan Hinton and Laura M. Richards to deny; Craig Ellis to deny by absentee vote; Angel F. Clarens not voting, having recused himself).

DECISION DATE: December 6, 1995

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

ATTESTED BY: Madeliene H. Dobbins
Director

Final Date of Order: JUN 26 1996

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."

16019ORD/TWR/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16019

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUN 26 1996 a copy of the order entered on that date in this matter was mailed 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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Madeliene H. Dobbins

MADELIENE H. DOBBINS
Director

DATE: JUN 26 1996

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16019 of the **Marjorie Merriweather Post Foundation of the District of Columbia,** pursuant to 11 DCMR 3107.2, for a variance from Subsection 201.1 to allow additions to and modifications of existing structures, new construction and modification of certain conditions of previous Board Orders governing the operation of an approved museum in an R-1-A District at premises 4155 Linnean Avenue, N.W. (Square 2245, Lot 800).

HEARING DATE: **January 18, 1995**
DECISION DATE: **March 1, 1995**

DISPOSITION: By Order dated October 26, 1995, the Board GRANTED the application by a vote of 4-0 (Susan Morgan Hinton, John G. Parsons, Laura M. Richards and Craig Ellis to grant; Angel F. Clarens not voting, having recused himself).

By Order dated June 26, 1996 the Board DENIED an opponent's motion for reconsideration by a vote of 4-0 (John G. Parsons, Susan Morgan Hinton and Laura M. Richards to deny; Craig Ellis to deny by absentee vote; Angel F. Clarens not voting having recused himself).

MODIFICATION ORDER

The Board initially granted Application 16019 by its order dated October 26, 1995 to allow additions to and modifications of existing structures, new construction and modification of certain conditions of previous Board Orders governing the operation of the Hillwood Museum. By letter dated November 30, 1998, counsel for the applicant filed a motion to waive the six-month filing requirement and a waiver to allow the current Board Members to decide this motion for modification of approved plans.

THE WAIVER REQUESTS:

Pursuant to 11 DCMR 3301.1, the Board may waive its rules where good cause is shown and where the Board determines that granting the waiver will not prejudice the rights of any party.

In this case, the applicant is requesting that the Board waive Section 3335.3 which requires an applicant to file for a modification of plans within six months of the final date of the Board's order. Under the Board's Rules, to be timely this motion should have been filed by April 26, 1996. The motion was filed on November 30, 1998, after the six month time limit had run. It is the applicant's position that to waive this rule will not prejudice any party to the application.

The Board **granted** the waiver of the six-month filing requirement and thereby implicitly determined that good cause had been shown and that granting the waiver would not prejudice the rights of any party.

The applicant is also requesting waiver of Section 3335.6 which states that a Board Member shall not vote on a request for a modification of plans unless that member participated in the original decision. The make-up of the Board has changed since the original decision on Application 16019. It is the applicant's position that to waive this rule will not prejudice any party to the application.

With regard to this waiver request the Board notes that the record was provided to all of the current members of the Board to allow them to participate and make an informed decision on the motion. None of the other parties submitted a statement addressing this waiver request. Therefore, the Board determines that no party to the application would be prejudiced by the granting of this waiver. Consequently, the Board hereby grants the waiver of Subsection 3335.6.

The Board allowed for the submission of the modification motion.

THE MOTION FOR MODIFICATION OF PLANS:

The motion for modification of approved plans must meet the requirements of Section 3335. Specifically, the test for review under Subsection 3335.7 states "Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application."

The modification of approved plans requested by the applicant will allow the applicant to (1) renovate the currently existing guardhouse at the main entrance to the Hillwood Museum into a restroom; (2) construct a new guardhouse directly across from the proposed restroom facility at the main entrance and; (3) replace the existing guardhouse at the service entrance with a newly constructed guardhouse.

The applicant stated that the requested modifications will ease access to the Hillwood Museum thereby reducing traffic congestion at the Hillwood Museum's entrances. Also, the additions will greatly improve the working conditions for several of the Hillwood Museum's employees and add to the aesthetics of the Hillwood Museum grounds as a whole. The applicant also stated that the newly created restrooms will be ADA accessible.

The renovation of the main guardhouse into restrooms will not increase the size of the structure. The newly constructed main guardhouse will be 100 square feet, while the newly constructed service entrance guardhouse will be 140 square feet.

Finally, in the applicant's letter dated November 30, 1998, the applicant requested that the Board grant it the flexibility to move the exact location of the **service entrance guardhouse** up to four feet to the east. The applicant indicated that such flexibility is necessary because the applicant is currently completing a survey of the property to determine the precise location of the property

lines. Once the survey is complete, the applicant will know exactly where it must build the service entrance guardhouse in order to comply with the building restriction line.

By letter dated December 11, 1998, the applicant amended the motion for modification by **eliminating the request for flexibility** in the location of the guardhouse.

None of the parties to the application submitted comments on the proposed modification of plans.

Upon consideration of the motion, the lack of response from the parties and the record in this case, the Board concludes that the proposed modifications to the approved plans are minor in nature and do not materially change the facts relied upon by the Board in deciding the initial application.

In light of the foregoing, it is **ORDERED** that the motions for waiver and modification of plans are **APPROVED, SUBJECT** to the **CONDITION** that construction shall be in accordance with the letter from Wilkes, Artis, Hedrick & Lane, dated November 30, 1998 with attached plans **(Exhibit No. 87)**, and the supplementary letter from Wilkes, Artis, Hedrick & Lane, dated December 11, 1998 **(Exhibit No. 88)** with attached plans. In all other respects, the previous orders of the Board shall remain in full force and effect.

DECISION DATE: February 3, 1999

VOTE: **4 - 0** (Sheila Cross Reid, Betty King, Jerry H. Gilreath to grant; John G. Parsons to grant by absentee vote; Anthony Hood not voting, not having heard the case)

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

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

FINAL DATE OF ORDER: MAR - 3 1999

PURSUANT TO D.C. CODE § 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 AMENED, 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 CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

16019ord/twr/ljp

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16019

MAR - 3 1999

As Interim Director of the Office of Zoning, I certify and attest that on _____ a copy of the order entered on that date in this matter before the Board of Zoning Adjustment 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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Allison Prince, Esquire
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Stephen Paterson Belcher
2935 Tilden Street, N.W.
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Attested By: Sheri M. Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

Attest/ljp