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February 25, 2005

NORMAN M. GLASGOW, JR.
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D.C. BOARD OF ZONING ADJUSTMENT
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VIA HAND DELIVERY

D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: **Application No. 17232 for Variance and Special Exception**
1400-20 Park Rd., NW; 3100-3220 14th St., NW; and 1417-37 Irving St., NW
Square 2674, Lots 719, 720, 812, 832, 863, 866,869, 870, 871 and 872

Honorable Members of the Board:

On behalf of the applicant in the above-referenced case, enclosed please find an original and twenty copies of the Applicant's proposed Findings of Fact and Conclusions of Law for the above-referenced application.

Thank you for your consideration of this matter.

Sincerely,

Norman M. Glasgow, Jr.

Enclosure

cc: Ellen McCarthy, Steven Cochran, Office of Planning (w/enclo. - via Hand Delivery)
ANC 1A (w/enclo. - via Hand Delivery)
Kenneth Laden, Douglas Noble, District Dept. of Transportation (w/enclo. – via Hand Delivery)
Thomas Ruffin, Jr., Esq. (w/enclo. - via Hand Delivery and U.S. Mail)

BZA
Case No. 17232
Exhibit No. 68

Board of Zoning Adjustment
District of Columbia
CASE NO. 17232
EXHIBIT NO. 68

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17232 of RLA Revitalization Corporation, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure requirements under section 411, and pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, to permit a multi-use commercial establishment in the C-3-A District at premises 1400-1420 Park Road, N.W., 3100-3220 14th Street, N.W., and 1417-1437 Irving Street, N.W. (Square 2674, Lots 719, 720, 812, 832, 863, 866, 869, 870, 871, and 872).

HEARING DATES: November 16, 2004; December 21, 2004; January 25, 2005; February 1, 2005; February 8, 2005

DECISION DATE: March 1, 2005

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PROPOSED DECISION AND ORDER

PRELIMINARY MATTERS:

Self-Certification

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

Procedural Background

1. On August 13, 2004, the RLA Revitalization Corporation (the "Applicant") filed an application with the Board of Zoning Adjustment (the "Board"), pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure requirements under section 411, and pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, to permit a multi-use commercial establishment in the C-3-A District. (Exhibit 1)

2. A Public Hearing Notice was issued on September 2, 2004, stating that a Public Hearing was scheduled for Tuesday, November 16, 2004 to consider the application. (Exhibit 17)

3. The Applicant filed a *Statement of the Applicant* on November 2, 2004, setting forth its satisfaction of the burden of proof for the requested special exception from the roof structure requirements and variance from the parking requirements. (Exhibit 23)

4. On November 8, 2004, Thomas Ruffin, counsel for Kelsey Temple Church of God in Christ and the Temple Church Building & Economic Development Corporation (collectively referred to herein as the "Parties in Opposition") filed a Party Status Application to participate in opposition to the application. (Exhibit 25)

5. The Office of Planning ("OP") filed a report on November 9, 2004 recommending approval of the special exception relief. (Exhibit 27) OP also recommended approval of the parking variance, provided the Applicant provide additional information regarding the uniqueness of the site, and the Applicant submit revised plans that are consistent with the District Department of Transportation's ("DDOT") comments regarding sidewalk widths.

6. On November 16, 2004, DDOT submitted a report approving the Applicant's request for a reduction in parking, provided the Applicant address certain sidewalk width and other public space concerns. (Exhibit 31)

7. On November 16, 2004, the Board received the Parties' in Opposition *Petition To Dismiss Or To Reschedule Hearing For Failure To Provide Notice To All Property Owners And Tenants Affecting And Deserving Notice Regulations* (the "*Petition to Dismiss or Reschedule*"). (Exhibit 28)

8. The Parties in Opposition argued in the *Petition to Dismiss or Reschedule* that proper notice was not provided to the requisite property owners and tenants. The Parties in Opposition argued that the Kelsey Temple Church of God in Christ and tenants living under a lease at the Samuel Kelsey Apartments did not receive notice of the hearing from either the Board or the Applicant. The Parties in Opposition also argued that the written notice provided by the Board and the Applicant was not issued in Spanish and other neighborhood languages such as Vietnamese. The Parties in Opposition also indicated that the Applicant failed to post notice on each property where the proposed development would take place. (Exhibit 28)

9. The Board convened a Public Hearing on Tuesday, November 16th to consider the application.

10. The Board found during the November 16th hearing that notices were properly mailed to property owners within 200 feet of the proposed development in accordance with the Zoning Regulations and the Office of Zoning procedures. The Board also found that the Zoning Regulations do not require Board notices to be issued in Spanish and other neighborhood languages.

11. The Board scheduled a further Public Hearing for December 21, 2004 to allow the Parties in Opposition time to prepare their case; allow the Applicant time to post notice on each property where the proposed development would take place; provide time for the Applicant to respond to the DDOT report submitted that day; and provide time for the Applicant to submit additional information requested by the Board.

12. Proper notice of the December 21st hearing was provided, and no objection to proceeding with the hearing on December 21st was raised.

13. The Applicant filed a *Supplemental Statement of the Applicant* on December 7, 2004 addressing the concerns raised during the November 16th hearing. (Exhibit 37)

14. On December 21, 2004, OP filed a Supplemental Report stating that the Applicant submitted supplemental information that adequately establishes the site's uniqueness, as

well as the practical difficulties that would result should the parking regulations be strictly enforced. (Exhibit 29) OP also submitted that the Applicant made the requested design changes that adequately address the relationship established between the parking reduction requested and the increase in pedestrian traffic. Thus, OP recommended that the Board approve both the requested special exception and the requested variance from §2102.1.

15. On December 21, 2004, DDOT filed a letter summarizing design changes the Applicant made to ensure a safe pedestrian environment, efficient traffic flow and adequate space for the public realm. (Exhibit 40) DDOT thus required no further revisions to the Applicant's proposed project and supported the application.

16. The Board reconvened the Public Hearing to consider the application on December 21st. During this hearing, the Board heard extensive direct testimony from, and cross examination of, the Applicant's witnesses. At the end of the hearing, the Board scheduled the Public Hearing for continuance on January 25, 2005.

17. On December 22nd, the Applicant filed a letter with the Board requesting that the Board consider alternative relief in the form of a special exception from the roof structure requirements under §411, a special exception pursuant to 11 DCMR §2108 to reduce the amount of required parking spaces by no more than twenty-five percent (25%), and a variance from §2115.9 to permit attendant assisted parking in the C-3-A District. (Exhibit 48) The Applicant subsequently filed a *Supplemental Statement Of The Applicant For Alternative Relief* on January 11, 2005, which describes the basis for the Applicant's requested alternative relief and establishes how the Applicant meets its burden of proof with respect to the requested alternative relief. (Exhibit 54)

18. On December 21, 2004, the Parties in Opposition filed a *Summary Brief of Kelsey Temple Church Of God In Christ And Temple Church Building & Economic Development Corp.* (the "*Summary Brief*"), arguing that the grant of the requested parking variance would result in substantial detriment to the public good; would substantially impair the intent, purpose and integrity of the local zoning plan; and that the subject property is not uniquely distinguishable from other properties in Columbia Heights or elsewhere in the District. (Exhibit 38)

19. The Parties in Opposition argue in their *Summary Brief* that if the Board grants the requested parking variance, the construction of the Applicant's project would displace local residential parking and local residents such that the subject property is in effect rezoned from C-3-A to either a C-3-B or a C-3-C zone. The Parties in Opposition also argue that the subject property is not unique because its shape and size is similar to that of other properties in the area. Moreover, the Parties in Opposition assert that the groundwater conditions at the subject property and its location near the Metro are practically identical to conditions at other locations in the District. The Parties in Opposition further argue that what distinguishes the proposed project and makes provision of the required parking impractical is the failure to reserve sufficient funds to construct more than 1,000 below-grade parking spaces. The Parties in Opposition also argue that by constructing the proposed project, the Applicant will be eliminating a site

that neighboring uses have relied upon to satisfy their parking requirements. Further, the Parties in Opposition state that the parking variance should be denied because there are existing uses on the site that generate rent, and former uses on the site did not require any parking variances. The merits of these arguments are addressed by the Board in Finding of Fact No. 36.

20. On January 4, 2005, the Parties in Opposition filed a *Motion to Challenge RLA Misrepresentations About DC USA Mall Off-Street Parking Requirements And To Deny RLA Application For Variance And Exception* (the "*Miscalculation Motion*") (Exhibit 49) and a *Motion to Dismiss RLA Application Because of Ex Parte Communications in Violation of Law* (the "*Ex Parte Motion*") (Exhibit 50).

21. In the *Miscalculation Motion*, the Parties in Opposition argue that the square footage attributable to the Applicant's proposed underground parking garage, and the area identified as the "closed court" should be included in the parking space calculation, and thus 3,011 parking spaces are required for the project.

22. The Applicant argues in the *Applicant's Response To Motion To Challenge RLA Misrepresentations About DC USA Mall Off-Street Parking Requirements And To Deny RLA Application For Variance And Exception*, filed January 18, 2005, that §2118.4, which provides for certain exclusions from the computation of the number of required parking spaces, excludes from the calculation of the number of parking spaces required for the project the square footage attributable to the underground parking garage, and the area identified as the "closed court" (which is comprised of covered loading berths, service/delivery loading spaces, and vehicular access to parking spaces and loading areas). (Exhibit 55). Thus, the Applicant argued that proper exclusions were made and the *Miscalculation Motion* should accordingly be denied.

23. At the January 25th Public Hearing, based solely upon the record before it, and without taking any testimony from either party, the Board voted to deny the Parties' in Opposition *Miscalculation Motion*. The Board found that §2118.4 excludes from the parking calculation the portion of the gross floor area or cellar area devoted to parking spaces, loading berths, loading platforms, service delivery, loading spaces, and vehicular access to parking spaces.

24. The Parties in Opposition argued in the *Ex Parte Motion* that the application should be denied because the Applicant and the project developer have had several *ex parte* conversations with Geoff Griffis, Chair of the Board, and with Douglas Noble, Associate Director of DDOT, concerning the subject application.

25. In the *Applicant's Response To Motion To Dismiss RLA Application Because Of Ex Parte Communications In Violation of Law*, filed on January 18, 2005, the Applicant states that neither representatives for the developer nor the Applicant have ever discussed the subject application with Chairman Griffis outside the context of a public hearing before the Board. (Exhibit 55) The Applicant further indicated that although representatives of the developer met with Associate Director Douglas Noble and staff members at DDOT to

discuss the traffic plan and proposed sidewalk design for the proposed project, these conversations with DDOT are not *ex parte* and do not violate any applicable rules.

26. At the January 25th Public Hearing, based solely upon the record before it, and without taking any testimony from either party, the Board voted to deny the Parties' in Opposition *Ex Parte Motion*. The Board found that Chairman Griffis has never been involved in type of meetings or discussions, other than the public hearings, with the Applicant, representatives of the developer, or Mr. Noble of DDOT. The Board also found that the factual basis of the *Ex Parte Motion* was in error.

27. On January 7, 2005, the Parties in Opposition filed a *Motion To Strike From Application #17232 Case File The Confidential Settlement Proposal Letter Filed By Jennifer Budoff And Any Testimony From Jennifer Budoff* (the "*Motion to Strike*"). (Exhibit 52) The Parties in Opposition argued in the *Motion to Strike* that the Board should strike from the record a letter dated December 18, 2004 prepared by the Parties in Opposition (the "December 18th letter") and submitted by Ms. Jennifer Budoff during the public hearing on December 21, 2004, and also strike from the record Ms. Budoff's testimony concerning the December 18th letter.

28. The Applicant argued in the *Applicant's Response To Motion To Strike From Application # 17232 Case File The Confidential Settlement Proposal Letter Filed By Jennifer Budoff And Any Testimony From Jennifer Budoff*, filed on January 18, 2005, that the *Motion to Strike* should be denied because: (1) the December 18th letter was not established to be confidential; (2) neither the Administrative Procedures Act nor the Zoning Regulations prohibit the admission of relevant and material evidence and testimony; (3) the December 18th letter is both material and relevant; and (4) Jennifer Budoff's testimony was material and relevant, but it was not repetitive. (Exhibit 55)

29. At the January 25th Public Hearing, based solely upon the record before it, and without taking any testimony from either party, the Board voted to deny in part and grant in part the *Motion to Strike*. Specifically, the Board denied the request to strike Jennifer Budoff's testimony, and granted the request to strike from the record the December 18th letter. The Board found that Jennifer Budoff's testimony was relevant and there was not substantial testimony referencing the December 18th letter. The Board used its discretion to remove the December 18th letter from the record because the facts and items raised in the letter were not directly relevant to the application. However, the Board noted that the initial admission of the letter did not prejudice the Board against the Parties in Opposition since the Board is often required to review submissions, determine what is relevant to the application, and determine the probative value of evidence.

30. On January 7, 2005, the Parties in Opposition also filed an *Opposition To Motion To Amend RLA Revitalization Corporation Application* (the "*Amendment Motion*") (Exhibit 53). The Parties in Opposition in the *Amendment Motion* requested that the Board deny the Applicant's motion to amend its original application and issue an order determining that the Applicant withdrew its application. The Parties in Opposition also argued in the *Amendment Motion* that the Applicant should be prohibited from filing a new application until ninety days from December 22, 2004.

31. In the *Applicant's Response To Opposition To Motion To Amend Application*, filed January 18, 2005, the Applicant argued that the Parties in Opposition's motion should be denied because: (1) the Applicant did not withdrawn its original application; (2) the Applicant presented both the original application and the alternative basis for relief, upon either of which the Board can evaluate to determine whether the Applicant met its burden of proof with respect to such request for relief, and can take appropriate action to dispose of either of the Applicant's requests; (3) the record was still open for the Applicant to make additional submissions; and (4) the Applicant provided notice of its intent to ask the Board to consider alternative relief to the Parties in Opposition, Advisory Neighborhood Commission 1A, and property owners within 200 feet of the site. (Exhibit 55)

32. On the morning of January 25, 2005, the Parties in Opposition filed a letter seeking continuance of the January 25, 2005 Public Hearing until February 1, 2005, due to illness of the Parties' in Opposition counsel. (Exhibit 57)

33. At the January 25th Public Hearing, the Board granted the Parties in Opposition request for a continuance until February 1st. Also, as discussed above, at the January 25th hearing, based solely upon the record before it, and without taking any testimony from either party, the Board ruled upon the various motions filed by the Parties in Opposition.

34. By letter dated January 31, 2005, Anthony C. Freeman, President and CEO of the RLA Revitalization Corporation, indicated that the parking garage proposed to be constructed will be financed with tax increment financing and will be subject to certain restrictions to ensure the parking garage will not be a general "public parking garage," but rather a garage for patrons of the proposed project. (Exhibit 59) The letter also stated that the garage owner will establish pricing and validation mechanisms to ensure that the primary users of the garage are customers of the proposed project.

35. The Board considered the *Amendment Motion* and the *Response to Amendment Motion* at the February 1st hearing. The Board decided to keep the application as originally advertised as a reduction pursuant to §2101.1 to 1,000 spaces, and to leave open the option to impose any conditions on the application to mitigate any outside public demand on the parking garage.

36. At the February 1st hearing, pursuant to a request from the Parties in Opposition, the Board, without participation from the Chair, who left the hearing room during reconsideration of the *Ex Parte Motion*, reconsidered the *Ex Parte Motion*. The Board heard testimony from Mr. Noble of DDOT indicating that Chairman Griffis was not involved in any conversations outside of the public hearings regarding the application or the Applicant's proposed project. Thus, based upon the testimony of Mr. Noble and the previous discussions and pleadings regarding the *Ex Parte Motion,* the Board voted again to deny the motion.

37. Counsel for the Parties in Opposition also made an oral motion at the Febraury 1st hearing seeking recusal of Chairman Griffis, based upon a document dated March 17, 1998, asserting that Chariman Griffis was allegedly involved in the early planning of the Applicant's project as a representative of the community; however, upon receiving

further information about the document, Counsel for the Parties in Opposition withdrew the oral motion. The Board then heard additional testimony from the Applicant's witnesses; government reports from OP and DDOT; and the Parties in Opposition's witness.

38. During the February 1st hearing, the Board also heard testimony from Mack James, Chair of Advisory Neighborhood Commission ("ANC") 1A, the ANC in which the project is located, in support of the application.

39. ANC 1A submitted two resolutions indicating that the ANC voted on two separate occasions in support of the Applicant's request for parking relief. (Exhibits 33 and 60) ANC 1A submitted a resolution indicating that the residents of Columbia Heights have repeatedly voiced strong support for the proposed project, and urged that the project move forward with a reduction in the number of required parking spaces to 1,000 spaces. (Exhibit 33) ANC 1A also submitted a resolution supporting the applicant's proposal to provide additional attendant assisted parking on an as-needed basis. (Exhibit 60) The resolution also indicates that comments from the community and the commissioners express the development be placed on a fast track.

40. On February 8, 2005, the Board heard rebuttal testimony from the Applicant's witnesses, and also heard closing arguments from the Applicant. At the close of the hearing, the Board instructed the parties to submit a Proposed Order by Friday, February 25, 2004. The Board also scheduled the matter for decision at the Board's Public Meeting on March 1, 2005.

41. On February 8, 2005, Delores Ruffin, the Parties in Opposition's witness, submitted a declaration to correct her mistaken testimony provided before the Board on February 1, 2004. (Exhibit 65) According to the declaration, Ms. Ruffin overestimated the size of the parking lot used by the Parties in Opposition, and indicated that the lot can accommodate approximately 150 parked cars. The Declaration also indicates that on most Sundays, the parking lot usually holds about forty-five to seventy-five parked automobiles of church parishioners and other vehicles in the neighborhood. Ms. Ruffin also states in her declaration that when parking demand for the Parties in Opposition exceeds 150 automobiles, their visitors utilize neighborhood streets.

42. The Board, at its March 1, 2005 Public Meeting, after discussion and deliberation on the application, approved the application by a vote of _____.

FINDINGS OF FACT:

1. The Site is located at 1400-1420 Park Road, N.W.; 3100-3220 14th Street, N.W.; and 1417-1437 Irving Street, N.W., also known as Lots 719, 720, 812, 832, 863, 866, 869, 870, 871 and 872 in Square 2674.

2. Square 2674 is bounded on the east by 14th Street, N.W., on the north by Park Road, on the west by Hiatt Place, and on the south by Irving Street.

3. The Site is in the C-3-A District in the Columbia Heights neighborhood of the City.

4. The Site compromises a substantial portion of Square 2674, with the exception of the Bell Multicultural School and various row dwellings, an apartment building and various small commercial uses in the northwestern corner of the square.

5. The Site consists of approximately 215,940 square feet of land area and is primarily vacant with the exception of various small retail uses in the northeast corner of the Square fronting on 14th Street and Park Road, and a building façade on Irving Street.

6. The Applicant's proposed building will have a gross floor area of approximately 513,722 square feet; however, only approximately 482,631 square feet is included in the parking calculation. Thus, the Applicant is required to provide 1,599 parking spaces.

7. The Applicant proposes to provide 1,000 self-park parking spaces in a two level, below grade parking garage. The Applicant has also proposed providing attendant assisted parking during peak demand periods that will accommodate up to a total of 1,244 vehicles.

8. The Project will include Target, other permitted retail uses, and a health club. Target will occupy approximately 178,000 gross square feet of the Project.

9. The Applicant is seeking a special exception from the roof structure requirements. The roof areas measure approximately 189,000 square feet and are proposed to be improved with several roof structures, including a stair tower and elevator enclosure on the northern portion of the roof, a larger penthouse/stair/mechanical enclosure near the center of the roof, and a stair tower and elevator on the lower roof portion of the Project. The Applicant also proposes to provide a number of eight foot mechanical structures on the roof levels to serve the needs of the proposed tenants of the Project.

10. The Applicant is required to provide a significant number of mechanical units on the roof due to the large overall size and footprint of the building and roof areas and the needs of the various tenants. The location of the mechanical units is driven by the internal configuration of the tenant space and the mechanical requirements of each space.

11. This large building, which includes approximately 513,722 square feet of gross floor area, cannot be served by one mechanical unit that would meet the needs of all tenants proposed to occupy the building.

12. Target's HVAC program requires separate mechanical units for separate interior zones of its store, and that the numerous mechanical units on the lower roof level of the proposed building are necessary because the various individual tenants require separate units since each unit can only serve a certain square footage.

13. A number of fresh air supply and exhaust vents from the parking garage will be located on the roof since the vents cannot exhaust onto the street because of pedestrians and the multiple vents will be too numerous to project from the building's walls.

14. In order to comply with the roof structure requirements, the Applicant would need to provide a substantial screen wall to make one large and out of scale enclosure. However, the multiple roof structures will be spread over a very large roof surface area and will not be seen from the street level around the building since the Project includes a three foot high parapet wall that create sightlines to help obscure the roof structures.

15. The placement of the roof enclosures helps to minimize the visibility of the structures because the structures are set back from the roof lines a distance at least equal to their height.

16. The size and visual impact of the roof structures are minimized by not placing them in one large penthouse that would occupy a substantial portion of the entire roof, would be significantly taller than a number of the mechanical units, and would result in construction of a visible and obtrusive structure.

17. The Site is unusual, in part, because it is very large and has an unusual shape. The Site contains approximately 215,871 square feet of land. As the land areas chart submitted by the Applicant indicates, the average land area of privately held properties within 225 feet of the Site is only 7,440 square feet, and the largest property other than the Site has a land area of approximately 53,495 square feet, which is only approximately 24% of the size of the Site.

18. Unlike other properties in the immediate area, due to the large size of the Site, it is ideally suited for uses to accommodate large tenants, including "big box" retailers such as Target, that require large floor plates.

19. Moreover, the Site is unique because of its unusual shape, its angled lot lines and the fact that the Site is a corner lot fronting on four streets and has frontage of approximately 510 feet on Irving Street, 510 feet on 14th Street, 225 feet on Park Road and 245 feet on Hiatt Place.

20. The site is also unique because of its planning history and its unique opportunity from a planning perspective for the District to realize the objective of obtaining and utilizing the only site within the 14th Street Urban Renewal Area which is large enough and is of a configuration such that it can support a major "big box," destination retail development. Indeed, the 14th Street Urban Renewal Plan designated this site as the prime community retail site in the Columbia Heights area. The site is the only site of sufficient size that is able to accommodate the retail desired by District planning officials and NCRC in this underserved area, which is one of the most densely populated areas in the District of

Columbia. The layout of the proposed building and the requested relief is driven in part by the design and proposed uses of the building.

21. To provide the full number of parking spaces required by the Zoning Regulations, the Applicant would have to construct a third, full sized level of parking, and a fourth smaller level of parking.

22. According to a subsurface investigation report prepared by the Applicant's geotechnical engineer, Mueser Rutledge, the groundwater would be approximately six feet, eight inches above the finished floor elevation of the third parking level, and mitigation of this problem will require an extensive drainage and waterproofing system.

23. Further, the Applicant's witnesses testified that a WMATA subway tunnel runs adjacent to the site on 14th Street, and as a result there would be a substantial premium associated with the required pre-loading of the sheeting and shoring as well as increased monitoring costs.

24. In addition, the Applicant submitted that construction of additional parking levels would require many design elements that are not based on the number of cars, such as elevators and parking ramps, be extended to the third and fourth parking levels. This results in a higher incremental cost per parking spot.

25. The preliminary construction budget analysis prepared by Clark Construction, the Applicant's general contractor, indicates that to provide the total amount of parking spaces required by the Zoning Regulations, the Applicant would have to construct a full third level and a partial fourth level of parking. The preliminary budget estimates prepared by Clark Construction indicates that the estimated cost of constructing the additional parking levels is approximately $23.8 million, or approximately $40,000 per space. The cost to construct the first two levels of parking is approximately $27,600 per space, meaning that the additional spaces would cost approximately fifty percent more than the spaces on the first two levels.

26. Moreover, adding the third and fourth parking levels would add approximately six months to the overall construction schedule, which would result in additional costs for capitalized interest, project management, architect and engineering fees.

27. In addition, constructing two additional levels will cause an eight to ten month overall delay in the opening of the retail uses proposed to be included in the Project.

28. The Applicant's traffic expert, Lou Slade of Gorove/Slade Associates, Inc., testified that due to the Site's adjacency to the Columbia Heights Metrorail station and several bus lines running on streets next to the site, there will be a significant amount of transit and pedestrian access to the site.

29. According to Lou Slade, this will lead to a significant decrease in the otherwise expected number of persons who would come to the site by automobile and have a need for parking. The traffic expert also submitted a report and testified that the Project will not

cause a detrimental impact to the transportation network in the neighborhood. Both OP and DDOT concurred with these conclusions.

30. As discussed in the Revised Parking Reduction Analysis prepared by Gorove/Slade Associates, Inc., the 1,000 proposed parking spaces is sufficient to meet the expected demand since the practical parking need rate results in only 983 spaces. The parking reduction analysis includes a "practical need calculation" based on retail industry standard parking ratios. According to the analysis, the practical need calculation demonstrates that for approximately 40% of the operational hours of the year, over half of the 1,000 parking spaces provided by the Applicant will remain empty, and that the peak parking demand of 983 parking spaces is 98% of what the Applicant proposes to provide.

31. Lou Slade also testified about his observations and analysis of the existing inventory and utilization of street parking in the vicinity of the proposed project as well as utilization of the parking lot that currently exists on the site. According to Mr. Slade, observations were conducted within an area surrounding the site, and parking occupancy counts were conducted on a number of days during the course of approximately fourteen hours. Based upon these observations, Mr. Slade concluded that the surface lot operated by the Parties in Opposition has an approximate parking supply of 55 spaces in a self-park configuration and the maximum observed occupancy of the parking lot was 45 cars at noon on one of the observed Sundays.

32. The Applicant has submitted that the project's planning history indicates, in part, that approval of the requested relief will be a public good. According to the Applicant's witnesses, the District has intended for the project to be developed as a major retail center where people can come to shop and congregate. Moreover, the Applicant's witnesses and the D.C. government representatives testified that the District envisions the development as a means to recapture approximately $10 million a year in tax revenue currently being lost to other jurisdictions because of the lack of shopping venues in the District. Indeed, by letters dated October 20, 2004 and January 28, 2005, Councilmember Jim Graham, the Council member for the ward in which the project is located, wrote to the Board in support of the application and urging its approval. (Exhibits 22 and 58) Also, by letters dated November 9, 2004 and November 15, 2004, Anthony C. Freeman, Acting President and CEO of the RLA Revitalization Corporation, wrote to the Board in support of the application and urging its approval. (Exhibits 26 and 35).

33. DDOT and OP concur that the parking variance should be granted.

34. The Parties' in Opposition primary argument against granting the requested parking relief is that granting the requested parking relief would displace local parking. In support of this argument, the Parties' in Opposition witness testified that "the community is shortchanged by 198 off-street parking spaces for residential dwelling spaces" and that the local business community has "a total of about 20 off-street parking spaces in this entire community."

35. However, in the declaration submitted by the Parties' in Opposition sole witness, Ms. Delores Ruffin, Ms. Ruffin indicates that although the existing parking lot on the Applicant's site can accommodate approximately 150 parked cars, the actual demand on the lot on most Sundays is between forty-five and seventy-five parked cars. Moreover, according to Ms. Ruffin, when the church holds meetings that result in a demand greater than 150 vehicles, the surplus vehicles park on neighborhood streets.

36. The arguments raised by the Parties in Opposition in their *Summary Brief* are without merit. As in initial matter, the granting of a variance to reduce the amount of parking for a project in no way affects a rezoning of the site from C-3-A to either a C-3-B or a C-3-C zone, and there is no basis for this argument. Moreover, the site is unique because of the factors discussed above. Although other sites in the District may be subject to some of the same conditions, the factors discussed above combine in a way that renders this site unique and affected by the factors differently than other sites may be effected. The Applicant has also established that there are significant practical difficulties that render complying with the parking requirement practically difficult. The Applicant is further not required to limit development of its property so that neighboring uses can rely upon the Applicant's site as a means to satisfy their parking requirements. Finally, the facts that existing uses on the site generate rent and former uses on the site did not require any parking variances are not proper considerations when determining whether this particular Applicant should be granted relief for this particular project.

37. The Board credits the testimony of the Applicant's witnesses and experts and finds their testimony to be creditable and supported.

38. As discussed below, the Board gives great weight to ANC 1A's resolutions in support of granting the requested relief.

CONCLUSIONS OF LAW

1. The Board is authorized to grant a variance pursuant to §3103.2 where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code §§5-413 to 5-432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship, provided, 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.

2. Pursuant to §411.11, where impractical because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board is empowered to approve the location, design, number and all other aspects of roof structures, provided that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

3. The Applicant has presented sufficient evidence to meet its burden of proof in establishing that it is entitled to the requested special exception and variance relief.

Special Exception

4. The Applicant complies with the special exception requirements since the size of building lot and other conditions results in a building with a very large footprint that is subject to various mechanical equipment requirements of the retail tenants, which calls for dispersion of elements on the roof tops. Moreover, in order to comply with the roof structure requirements, the Applicant would need to provide a substantial screen wall to make one large and out of scale enclosure.

5. The granting of the requested special exception relief will not harm the public good in that the multiple roof structures will be spread over a very large roof surface area and will not be seen from the street level around the building since the Project includes a three foot high parapet wall that create sightlines to help obscure the roof structures. Moreover, the placement of the roof enclosures helps to minimize the visibility of the structures to the greatest extent possible because the structures are setback from the roof lines a distance at least equal to their height. Finally, the size and visual impact of the roof structures are minimized by not placing them in one large penthouse that would occupy a substantial portion of the entire roof, would be significantly taller than a number of the mechanical units, and would result in construction of a visible and obtrusive structure.

Variance

6. The Applicant has established that the Site is subject to an exceptional or extraordinary situation or condition by demonstrating that the site is an unusually shaped site of large size; the water table is above the level of what would be the third and fourth parking levels; and the presence of the Metrorail tunnel below 14th Street affects this site differently than it would others.

7. The Applicant has also sufficiently established that the strict application of the parking requirements would result in peculiar and exceptional practical difficulties. As described in detail in both the Applicant's written submission and the Applicant's witnesses' testimony, the cost premium associated with constructing the amount of parking required by the Zoning Regulations is nearly fifty percent per space above the cost of constructing spaces in the proposed two parking levels.

8. The Applicant has also established that granting the requested parking relief will not be a detriment to the public good. OP and DDOT concurred in this analysis. As set forth in the testimony and submissions made in this case, new retail development on this site is consistent with planning objectives for Columbia Heights.

9. The Parties in Opposition argue the application should be denied because there are other uses in the neighborhood that have insufficient parking and the present parking lot on the site helps to offset that deficit. However, this position is a misreading of the variance statute. This applicant is not required to provide parking for the neighborhood but is required to provide parking to satisfy the regulations based on the square footage of the development proposed on this lot. Indeed, any development of this site, with or without a variance, would result in the loss of the existing parking lot.

10. Moreover, the 1,000 self-park spaces to be provided meets expected site-related demand, and the Applicant has proposed providing a total of 1,244 spaces in an alternative attendant-assisted parking mode which provides for a margin of error.

11. Since the Parties in Opposition have indicated that the church's normal parking demand on most Sundays is between forty-five and seventy-five parked cars, the Applicant's provision of 244 extra parking spaces when needed should be sufficient to meet the church's demand, although the Applicant's are not required by the Zoning Regulations to do such.

12. The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; now codified at D.C. Official Code § l-309.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. To give great weight the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANCs issues and concerns.

13. In this case, ANC 1A has submitted two resolutions in support of the requested relief, and the Chair of ANC 1A testified in support of the application. As stated above, the Board

finds that the Applicant has met its burden of proof with respect to the requested variance and special exception relief. Accordingly, the Board gives great weight to ANC 1A's resolutions and testimony in support of the application.

14. The Board further concludes that, as hereinafter conditioned, the requested variance 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. It is therefore **ORDERED** that the application is **GRANTED, SUBJECT** to the following **CONDITIONS**:

    1. The Applicant shall, at such time as the 1,000 self-park spaces are filled, provide an attendant assisted mode which will result in a total of 1, 244 parking spaces;

    2. The Applicant shall establish pricing and validation mechanisms to insure that the primary users of the garage are customers of the retail project; and

    3. The Applicant shall seek further review from the Board if, upon final design and determination of the proposed uses for the subject property, the number of parking spaces required for the project exceeds 1,599.

Therefore, for the reasons stated above, it is hereby **ORDERED** that: The motion to approve the special exception is **GRANTED**.

VOTE:

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

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

DATE OF FINAL ORDER:_____

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