DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

:

RLA Revitalization Corp. :
applicant Application number 17232

:

KELSEY TEMPLE CHURCH AND TEMPLE CHURCH BUILDING & ECONOMIC DEVELOPMENT CORPORATION PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Kelsey Temple Church of God in Christ and the Temple Church Building & Economic Development Corporation, as the opposition, offer the following as proposed findings of fact and conclusions of law for this particular agency adjudication:

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Findings of Fact

1. RLA Revitalization Corporation ("RLA"), a District of Columbia government-created public corporation, owns the parcel of land at 14th and Irving Streets and Park Road, N.W. ("parcel" or "parcel of land"), for which RLA seeks a parking variance and a roof exception from the District of Columbia Board of Zoning Adjustment.

2. The District of Columbia Zoning Commission regards the parcel of land for which RLA seeks a parking variance and a roof exception as part of a C-3-A business district.

3. Kelsey Temple Church of God in Christ ("Kelsey Temple Church"), a party in opposition, leases a parking lot located at 1422 Park Road, N.W. This parking lot occupies part of the parcel for which RLA seeks relief in this case. Kelsey Temple Church parishioners and guests use this parking lot.

4. The Temple Church Building & Economic Development Corporation ("TCBEDC"), a party in opposition, uses the parking lot at 1422 Park Road under the Kelsey Temple Church lease of the parking lot.

BZA
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Board of Zoning Adjustment
District of Columbia
CASE NO. 17232
EXHIBIT NO. 69

5. The District of Columbia contracted with the following "development team" to construct a proposed DC USA Mall on the parcel of land owned by RLA: Grid Properties, Inc., Gotham Organization, the Development Corporation of Columbia Heights, and Joseph Searles III (all as "development team"). **Transcript of BZA Hearing** (Dec. 21, 2004), p. 89, L. 22 through p. 90, L. 4 (Drew Greenwald testimony).

6. The proposed DC USA Mall would include an indoor mall with a "big box" Target Store and up to twenty-nine other retailers. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 251, L. 2-6 (Greenwald testimony). These thirty retail stores would occupy about 486,631 square feet of gross floor area out of a total gross floor area of about 516,511 square feet at the proposed mall. The Target Store would occupy an estimated 178,000 square feet of gross floor area in the proposed mall.

7. The mall would also include additional cellar area for an underground off-street parking garage that would be owned by the National Capital Revitalization Corporation ("NCRC"). **Transcript of BZA Hearing** (Dec. 21, 2004), p. 91, 14-15 and p. 120, L. 5-6 (Greenwald testimony). The NCRC, like the applicant, RLA, operates as a public corporation created and owned by the District of Columbia government.

8. According to **11 DCMR 2101.1**, the 486,631 square feet of gross floor area proposed for commercial businesses at the DC USA Mall would require the developer and the applicant to provide 1,612 off-street parking spaces at the proposed mall site. Also, under **11 DCMR 2115.1 *et seq.***, off-street parking spaces at the proposed DC USA Mall must comply with minimum length and width restrictions and must comply with minimum access and egress requirements.

9. In order to provide the 1,612 off-street parking spaces required by **11 DCMR 2101.1**, the development team plans to construct an underground parking garage with four levels of below-grade parking, with 500 parking spaces on level one, 500 parking spaces on level two, 500 parking spaces on level three, and the remaining parking spaces on level four. **Clark Construction Group**, *Letter to D.C. Board of Zoning Adjustment* (Dec. 6, 2004), p. 1.

10. Geological borings of the RLA-owned parcel of land in October 2003 provided soil samples that, upon testing, revealed groundwater at about six to eight feet above what would be the floor of parking level three in the proposed DC USA Mall. **Mueser Rutledge Consulting Engineers**, *Letter to DC USA Operating, Co., LLC* (April 13, 2004), p. 6.

11. The Washington Metropolitan Area Transit Authority ("WMATA") maintains subway tunnels underneath or near 14th Street, along the east border of the parcel of land owned by the applicant.

12. Underground construction and other digging operations on land throughout the District of Columbia often involve engineering problems that arise from groundwater below the surface. Likewise, underground construction and other digging operations on land throughout the District of Columbia often involve engineering and maintenance problems that arise from construction work performed close to the border of WMATA subway tunnels.

13. Like other parcels in the District of Columbia, underground construction costs at the site of the proposed DC USA Mall will increase as the construction digs deeper underground. *See* **Transcript of BZA Hearing** (Dec. 21, 2004), p. 147, L. 22 through p. 148, L. 14 (Stipulation from Glasgow); p. 154, L. 19 through p. 155, L. 19, p. 156, L. 2-9, and p. 156, L. 16 through p. 157, L. 13 (Prifti testimony); p. 158, L. 8-13 (Greenwald testimony).

14. The applicant never examined ground water and other underground conditions in other parts of the District of Columbia, and the applicant never compared ground water and other underground conditions in other parks of the city with the site for the proposed construction of the DC USA Mall. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 265, L. 7-16 and p. 266, L. 22 through p. 267, L. 5 (Kenneth Carlson testimony).

15. The applicant seeks relief under **11 DCMR 2108** and **3103.2** from the zoning regulation which mandates that the proposed DC USA Mall include 1,612 off-street parking spaces. The applicant seeks a variance that would permit merely 1,000 off-street parking spaces at the DC USA Mall. The applicant also seeks an exception that would

permit a twenty-five percent reduction in the number of mandated parking spaces from 1,612 to 1,209. As an alternative, the applicant also seeks relief under **11 DCMR 3103.2** from zoning regulations which mandate specific length and width requirements for off-street parking spaces and which mandate specific access and egress requirements for off-street parking spaces.

16. The Advisory Neighborhood Commission with jurisdiction over the proposed mall site supports the applicant's request for relief from the zoning regulations that require 1,612 off-street parking spaces at the proposed DC USA Mall and that mandate specific size and access-egress requirements for off-street parking spaces. The District of Columbia Office of Planning and the District Department of Transportation also support the applicant's request for relief.

17. However, the developer's plans for 486,631 square feet of commercial space at the DC USA Mall arise solely from "the amount of parking that" the developer "could provide" at the proposed mall. In other words, as stipulated by the applicant, "the amount of parking that we could provide [would] drive the size of the [DC USA Mall] project". **Transcript of BZA Hearing** (Dec. 21, 2004), p. 89, L. 13-15 (Stipulation from Norman Glasgow, Esquire).

18. The development team acquired from the District of Columbia government up to $42 million in tax-increment revenue bonds for the construction of an underground parking garage at the DC USA Mall. The development team acquired the $42 million according to terms of local legislation from the Council of the District of Columbia. **Tax Increment Revenue Bonds DC-USA Project Emergency Approval Resolution of 2004** (Res. 15-653)(July 13, 2004); **Transcript of BZA Hearing** (Dec. 21, 2004), p. 215, L. 20 through p. 216, L.2 (Jennifer Budoff testimony).

19. The development team faced "a limitation on the amount of financing available for" the construction of the proposed parking garage. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 91, L. 14-20 (Greenwald testimony). The development team never sought financing for the underground garage from any source other than the District of Columbia. Hence, the $42 million in bond financing is the only money available for constructing

off-street parking spaces at the DC USA Mall. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 251, L. 22 through p. 252, L. 10 (Greenwald testimony).

20. According to the applicant, the $42 million in bond financing provides enough money to build an underground parking garage with no more than 1,000 off-street parking spaces.

21. The size of the proposed parking garage depends on "economic constraints" which, according to the applicant, compelled a design of a two-level garage with 1,000 off-street parking spaces "as opposed to the more expensive three-level [or four-level underground] facility" which would accommodate 1,612 off-street parking spaces. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 91, L. 14-20 (Greenwald testimony). In other words, the size of the proposed garage depends entirely on the amount of money that the developer can obtain from the District of Columbia government. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 104, L. 23 through p. 105, L. 6 (Greenwald testimony); also p. 188, p. 9-16 (Budoff testimony); p. 172, L. 24 through p. 173, L. 4 (Greenwald testimony).

22. The applicant and the development team never considered the construction of above ground parking for the proposed DC USA Mall. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 225, L. 6-10 (Michael Prifti testimony); **Transcript of BZA Hearing** (Dec. 21, 2004), p. 271, L. 20 through p. 272, L.15 (Budoff testimony).

23. A 1,000-space parking garage "is the largest garage that is financially feasible, given the availability of public and private financing and the lack of funding for the garage in the project". **Transcript of BZA Hearing** (Dec. 21, 2004), p. 188, L. 9-16 (Budoff testimony).

24. The District of Columbia government determined that, in order "to entice Target" Stores to establish one of its retail operations at the DC USA Mall, the District "need[ed] to provide the parking that a Target requires" for this particular project. The District of Columbia government made this determination as opposed to requiring the development team and Target Stores "to provide as much parking as … [they] could possibly provide". **Transcript of BZA Hearing** (Dec. 21, 2004), p.

105, L. 17 through p. 106, L. 6 and p. 252, L. 11 through p. 253, L. 4 (Greenwald testimony).

25. The underground parking garage at the DC USA Mall will be a "public parking facility" that "will be open to the public". **Transcript of BZA Hearing** (Dec. 21, 2004), p. 183, L. 8-15 and p. 199, L. 9-13 (Budoff testimony).

26. The Target Store at the proposed DC USA Mall would draw upon clientele who would drive "from other parts of the District" of Columbia. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 102, L. 5-14 (Greenwald testimony). In fact, a retailer the size of the proposed Target Store, that is, that would be about 178,000 square feet, would probably draw upon clientele living within "a five mile radius" from the mall. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 102, L. 17-24 (Greenwald testimony).

27. The proposed DC USA Mall will employ 1,500 permanent employees at the site. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 182, L. 23-25 (Budoff testimony).

28. The applicant presented no expert studies or surveys that showed what percentage of the 1,500 DC USA Mall permanent employees will park in the mall's off-street parking facility. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 151, L. 11-21 (Louis Slade testimony).

29. At the proposed DC USA Mall, the Target Store alone will require at least 700 off-street parking spaces. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 131, L. 1-10 (Greenwald testimony).

30. Target Stores has a policy that prohibits its employees from parking in the DC USA Mall parking garage during "peak times". Most major retailers have similar policies. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 133, L. 17-25 (Greenwald testimony); p. 138, L. 16-25 (Slade testimony).

31. Although the applicant presented evidence about the parking requirements for the Target Store at the DC USA Mall, the applicant never provided evidence about the minimum parking requirements of the other twenty-nine retailers that will do business at the mall.

32. The applicant presented no expert studies or surveys that estimated the number of patrons who would visit the DC USA Mall on a daily or an hourly basis.

33. From May 16, 2002 through at least January 2004, the plans for the DC USA Mall called for a total gross floor area of about 550,000 square feet. **Supplemental Statement of the Applicant** (Dec. 7, 2004), p. 2 (attached to Norman Glasgow, Esq., letter dated December 7, 2004). In January 2004, the applicant expected that the "total" parking demand for a DC USA Mall with a total gross area of 550,000 square feet would be about 1,139 off-street parking spaces. **Cambridge Systematics, Inc.**, Columbia Heights & Mount Pleasant Transportation Study (Jan. 2004), p. 2-33.

34. On about December 7, 2004, the development team reduced the proposed gross floor area for the DC USA Mall to about 516,511 square feet as opposed to the 550,000 square feet originally planned for the mall in January 2004. **Bower, Lewis & Thrower,** *Architectural Drawings* (Dec. 7, 2004), p. Z102A ("Ground Floor Plan").

35. However, in reducing the DC USA Mall gross floor area to 516,511 square feet, the developer eliminated the retailers which it regarded as less profitable. Hence, the proposed mall would still include "those retailers that gross on a per square foot basis on a higher level". **Transcript of BZA Hearing** (Feb. 1, 2005), p. 86, L. 11 through p. 87, L. 24 (Michael Jasso testimony).

36. The applicant provided no information about the amount of patronage that the proposed DC USA Mall would lose as a result of eliminating the less profitable retailers.

37. There is no basis for determining that the reduction in the mall's total gross floor area from 550,000 square feet to 516,511 square feet will decrease the total parking demand of 1,139 off-street parking spaces as estimated by the applicant in January 2004.

38. The applicant has no pricing structure or other parking program in place to ensure that the DC USA Mall will fully accommodate the patrons, the employees, and the other commuters who will use the parking garage at

the mall. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 209, L. 6-23 (Slade and Budoff testimony).

39. Also, the applicant has no parking program in place to ensure that patrons and employees at the DC USA Mall will not park in neighborhood streets surrounding the mall.

40. The applicant cited the Columbia Heights & Mount Pleasant Transportation Study (Jan. 2004), a 2004 survey prepared for the District Department of Transportation about the travel habits of residents living near the parcel where the DC USA Mall would be constructed. However, this survey of Columbia Heights residents provided no insight into travel habits of DC USA Mall patrons, employees, and other visitors who would not live near the proposed mall.

41. The applicant also cited WMATA's Development-Related Ridership Survey (Dec. 1989), a 1989 survey about travel habits of patrons visiting shopping centers downtown and in suburban malls outside of the District of Columbia. However, since this survey focused on downtown and suburban shopping centers in 1989, it provided little or no insight into future travel habits of DC USA Mall patrons, employees, and other visitors who would not live near the proposed mall.

42. The applicant cited Parking Requirements for Shopping Centers: Summary Recommendations and Research Study Report (2d ed. 2000), a 1999 Urban Land Institute study reprinted in 2000 and focused on travel habits of patrons visiting suburban malls in different regions throughout the United States. However, since this survey focused on suburban malls as opposed to the inner city mall for which the applicant sought relief in this case, this particular study provided no insight into travel habits of mall patrons, employees, and other visitors who would reside outside of the area of the proposed DC USA Mall.

43. The number of customers who visit the proposed mall, and who would use the mall parking lot, would be determined in part by the type of stores and the number of retailers doing business within the mall. **Transcript of BZA Hearing** (Dec. 21, 2004), p. 113, L. 4-10 and L. 23 through p. 114, L. 3 (Slade testimony); Parking Requirements for Shopping Centers: Summary Recommen-

dations and Research Study Report (2d ed. 2000), 3. However, the applicant never identified more than about three retailers that may do business, along with Target Stores, within the proposed DC USA Mall.

44. Columbia Heights, the neighborhood where RLA and the development team would construct a DC USA Mall, has about 50,210 residents, or about nine percent of the total District of Columbia population, according to the 2000 United States Census. **Transcript of BZA Hearing** (Feb. 1, 2005), p. 169, L. 7-10 (Delores Ruffin testimony); **Cambridge Systematics, Inc.,** Columbia Heights & Mount Pleasant Transportation Study (Jan. 2004), p. 1-3.

45. At present, the residential community immediately surrounding the site of the proposed DC USA Mall has a total of about 613 individual dwelling units but only 109 off-street parking spaces. Under **11 DCMR 2101.1**, one parking space would be recommended for every two dwelling units in this neighborhood. Hence, the community appears to be without 198 needed off-street parking spaces. **Transcript of BZA Hearing** (Feb. 1, 2005), p. 169, L. 15 through p. 171, L. 9 (Ruffin testimony).

46. At present, the business and the residential community immediately surrounding the site of the proposed DC USA Mall includes twenty stores, the Unity Health Clinic, a Riggs National Bank, one small church, and two large churches each holding about 1,200 seats apiece in their respective sanctuaries. Without counting the off-street parking provided at the parking lot located at 1422 Park Road and owned by RLA, these twenty stores and local establishments have a total of twenty off-street parking spaces available to them in the entire community. **Transcript of BZA Hearing** (Feb. 1, 2005), p. 171, L. 10 through p. 172, L. 6 (Ruffin testimony).

47. At present, the 1400 block of Park Road, the 1400 block of Irving Street, and the 3200 blocks of 14th Street and Hiatt Place often become congested with excessive amounts of automobile traffic, particularly during morning and evening rush hour. **Cambridge Systematics, Inc.,** Columbia Heights & Mount Pleasant Transportation Study, p. 1-9 through 1-11. Park Road often becomes congested from 14th Street to 16th Street on Sunday afternoons. **Transcript of BZA Hearing** (Feb. 1, 2005), p. 172, L. 16-19 (Ruffin testimony).

Conclusions of Law

48. The applicant and the development team cannot afford the cost of constructing an underground garage that could provide adequate off-street parking lack for the proposed DC USA Mall, that is, if the commercial space in the mall would have a gross floor area of 486,631 square feet. Although provided $42 million in bond financing, the applicant's and the development team's proposal calls for the construction of an underground parking garage that they cannot afford.

49. However, the parcel of land for which RLA seeks relief from the Board does not, as a result of its groundwater or its location near a WMATA subway tunnel, appear to be exceptionally narrow, shallow, or shaped so as to create a peculiar or exceptionally practical difficulty that precludes compliance with the off-street parking rules set out in the District of Columbia zoning regulations.

50. Moreover, the parcel of land does not, as a result of its groundwater or its location near a WMATA subway tunnel, appear to be have exceptional topographical conditions or some other extraordinary or exceptional situation so as to create a peculiar or exceptionally practical difficulty that precludes compliance with the off-street parking rules set out in the District of Columbia zoning regulations.

51. In fact, the difficulty that may preclude the applicant's compliance with the off-street parking requirements in the local zoning regulations appears to be the applicant's decision to construct a mall and an underground parking garage that it cannot afford.

52. The applicant does not merit a variance from the requirement that the proposed mall provide 1,612 off-street parking spaces. Nor does the applicant merit a variance from the requirement that its off-street parking spaces comply with length and width rules or the access-egress rules set out in the zoning regulations.

53. The applicant has failed to provide information about the number of people who "can reasonably be expected to use the proposed" DC USA Mall. The applicant has failed

to inform the Board about the amount of traffic congestion that should reasonably be expected to arise from the construction of the mall. The applicant admitted that, other than at the DC USA Mall, no off-street parking will be available to the public after the construction of the mall.

54. The applicant demonstrated that a WMATA subway station will operate at the corner of 14th and Irving Streets after the construction of the proposed mall.

55. However, an exception that would reduce the off-street parking requirements for the DC USA Mall would not be in harmony with the general purpose and intent of the District of Columbia zoning regulations and zoning maps. The exception would adversely affect neighboring residential, business, and church properties by not requiring sufficient off-street parking for a neighborhood already lacking in sufficient off-street parking spaces. The failure to provide the off-street parking requirement by **11 DCMR 2101.1** would seriously threaten and likely destroy the harmony expected of developments in this particular C-3-A business district.

56. The exception from the parking requirements would be inappropriate in this case.

57. However, where the applicant sought a roof exception from the requirements set out in the local zoning regulations, this particular request will not adversely affect the neighboring property. Nor will a grant of this request be out of harmony with the general purpose and intent of the zoning regulations and zoning map.

58. The exception from roof requirements as sought by RLA has merit and shall be granted.

WHEREFORE, the applicant's request for variances and for an exception from off-street parking requirements shall be denied, but the applicant's request for an exception from roof requirements shall be granted.

IT IS SO ORDERED.

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Chairperson

Certificate of Service

I, Thomas Ruffin, Jr., certify that, on February 25, 2005, I mailed a copy of these proposed findings and conclusions to the office of Norman Glasgow, Esquire.

Thomas Ruffin

Thomas Ruffin, Jr.