GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17271 of JBG/Louisiana Avenue, L.L.C., pursuant to 11 D.C.M.R. 3103.2 for a variance from the height limitation of 11 DCMR § 770.1, to allow an addition to an existing office building in the C-3 District at premises 51 Louisiana Avenue, N.W. (Square 631, Lot 17).

HEARING DATE: January 18, 2005
DECISION DATE: January 18, 2005 (Bench Decision)

DECISION AND ORDER

This application was submitted on November 5, 2004 by the owner of the property that is the subject of the application, JBG/Louisiana Avenue, LLC. ("Applicant"). The self-certified application requested a height variance to allow a 130-foot building height in a C-3-C zoning district.

Following a hearing on January 18, 2005, the Board voted 3-0-2 to approve the height variance.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memorandum dated November 9, 2004, the Office of Zoning gave notice of the application to the District of Columbia Office of Planning ("OP"), the D.C. Department of Transportation, Advisory Neighborhood Commission ("ANC") 6A, the ANC within which the property is located, the Councilmember for Ward 6, and Single Member District/ANC 6C09. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the application in the *D.C. Register* and on November 18, 2004, provided notice of the hearing to the Applicant, ANC 6C, and all owners of property within 200 feet of the property. Further, the Applicant's Affidavit of Posting shows that, on January 3, 2005, 5 zoning placards were placed on the 5 street frontages of the Acacia Building, located on the Property.

Requests for Party Status. ANC 6A was automatically a party to this proceeding. There were no requests for party status.

Applicant's Case. The Applicant presented testimony from several witnesses concerning the design of the proposed new building and new atrium space, and concerning the need for the height variance. Mr. Cinkala, a principal with the Applicant, testified with regard to the uniqueness of the property. Mr. Dove and Mr. Harbour, both members of the architectural team working on the project, discussed the difficulties of designing the new building and atrium due to the unique features of the Property. Mr. Orr, a development management consultant, and Mr. Slade, a traffic consultant, testified as to the cost of the

Board of Zoning Adjustment
District of Columbia
CASE NO. 17271
EXHIBIT NO. 32

project, and as to the lack of adverse traffic and parking impacts, respectively. Mr. Santry spoke on behalf of the tenant of the proposed new building. Lastly, both Mr. Cinkala and Mr. Dove testified as to security issues, relying to some extent on the report of the security consultant hired by the Applicant.

Government Reports. The Office of Planning, by a report filed January 11, 2005, and by testimony at the hearing, recommended approval of the application. OP opined that the property is unique because of its shape and historic nature and the shape of the existing buildings, which leave inadequate space to capitalize on the remaining matter-of-right floor area ratio ("FAR") available. OP noted that the Tiber Creek combined storm sewer and the Metro tunnel limit underground development on the property. OP also noted that there are other 12-story buildings in the extended neighborhood and that the proposed variance will likely not have a substantial detriment on the surrounding neighborhood.

The Commission of Fine Arts submitted a letter into the record stating that at its meeting of November 18, 2004, the Commission reviewed and approved the proposed concept for a new 12-story office building to replace the existing 4-level parking garage. The Commission also stated that it encouraged the strong statement of contemporary design with the inclusion of environmentally-conscious features.

The Architect of the Capitol, after consulting with the Senate Sergeant at Arms, submitted a letter in opposition to the variance, citing a possible security risk to the Capitol Building. The United States Senator for the District of Columbia (Shadow) submitted a letter countering the letter from the Architect of the Capitol and asserting that there is no evidence that the height variance, if granted, would create any greater security risk than already exists, and further, that even if a security risk exists, there is no evidence that it would be mitigated by the denial of the variance.
ANC Report. Advisory Neighborhood Commission 6A timely filed a letter in support of the application on December 16, 2004. The letter stated that at a properly-noticed meeting on December 8, 2004, with a quorum present, ANC 6A unanimously agreed to support the variance request provided that the applicant seeks LEED certification for the building.

FINDINGS OF FACT

The Property and the Surrounding Area

1. The subject site is known as 51 Louisiana Avenue, N.W., Square 631, Lot 17 (the "Property").

2. The Property is located in the C-3-C zoning district, within the Downtown East Receiving District, and within the Central Employment Area.

3. The Property is an irregularly-shaped, 5-sided parcel containing 91,021 square feet of land. It is located directly across from the U.S. Capitol

grounds, and near, although not adjacent to, Union Station and federal courts and offices.

4. The Property is situated on a full city block and is bordered by D Street, N.W. to the north, New Jersey Avenue, N.W. to the east, Louisiana Avenue, N.W. to the southeast, C Street, N.W. to the south (the property along C Street curves slightly to the northwest), and 1st Street, N.W. to the west.

5. The Generalized Land Use Map of the Comprehensive Plan designates the Property and the surrounding area in the highest density commercial designation.

6. The surrounding area is dominated by hotel, commercial and institutional uses, although the areas immediately adjacent to three sides of the Property are green spaces.

7. The Property is improved with an above-ground six-level parking garage built in the 1970's and two separate but connected buildings (known as the "Acacia Building" and "Annex Building") that are configured in a V shape around a modest interior courtyard.

8. The Acacia and Annex Buildings contain approximately 208,747 square feet of gross floor area or 2.29 FAR.

9. The total current FAR for the Property, including the above-grade parking garage, is 3.30, with a total gross floor area of 300,997 square feet.

10. The six-level above-grade parking garage accommodates 463 vehicles and is located on the northern portion of the Square fronting on 1st Street, New Jersey Avenue and D Street, N.W.

11. The 1935 Acacia Building is historically important. It was designed by the New York firm of Shreve, Lamb and Harmon, the architects for the Empire State Building, and has a limestone façade set with solar glass panel windows with anodized aluminum window frames on all sides.

12. The Acacia Building includes large cut stone blocks and limestone accents and soffits at the upper floor levels. It has fifteen-foot (15') floor-to-floor ceiling heights and a two-story main lobby with marble floors and walls.

13. A rooftop terrace occupies forty-five percent (45%) of the roof on the existing buildings, and features concrete pavers and raised, professionally maintained planters.

The Project

14. The Applicant proposes to raze the existing above-grade parking garage and replace it with a 12-story office building with 6 levels of below-grade parking. The proposed new building will be used, for the foreseeable future, solely, or primarily by, a single tenant, the law firm of Jones, Day.

15. The Applicant also proposes to construct a triangularly-shaped glass-covered atrium in a portion of the courtyard which will be open at its sides and will cover a series of ramped walkways connecting various floors of the new building to various floors of the existing buildings.

16. Together with the proposed new building, the Property will contain approximately 544,583 square feet of gross floor area or a 5.98 FAR. 6.5 FAR is allowed as a matter of right.

17. The Applicant's request for a height variance to 130 feet, the maximum height permitted by the 1910 Height of Buildings Act, gains the project approximately an additional 50,000 square feet.

18. Below-grade, the Tiber Creek combined storm sewer tunnel runs through the Property, and the Metro tunnel runs along its northern edge. Both of these tunnels are currently in use and it would be prohibitively costly to divert the Tiber Creek tunnel.

19. Construction of the 6 levels of below-grade parking, to provide required parking and to replace the existing parking garage, adds significantly to the cost of the project. The presence of the two subterranean tunnels mandates smaller-than-normal garage floor plates and greater-than-normal underpinning, sheeting and shoring, as well as construction of a complex and expensive slurry wall to support the Creek. Also, due to the location of the Creek, the southeast corner of the proposed building is truncated and requires a special structure. As a result of the presence of the two tunnels, there is an estimated additional cost of $2 million for the garage construction.

20. There exists a stand-still agreement with the District of Columbia Preservation League ("DCPL") entered into by the prior owner in exchange for DCPL agreeing not to pursue an application for designation as a historic landmark so long as the Acacia and Annex Buildings were not altered.

21. The proposed new building and new atrium must be designed in such a way as to take into account the historic nature of the existing buildings on the Property. Design elements and solutions to accommodate the concerns of the Commission of Fine Arts, OP, DCPL, and the ANC amount to additional costs of $13 - $15 million.

22. Without the variance, the estimated economic loss, at $150/FAR square foot, would be $7.5 million.

23. Pursuant to § 2101 of the Zoning Regulations, the proposed new building is required to provide 301 parking spaces. The Applicant proposes to provide parking spaces for 443 vehicles, approximately 40 of which will be in tandem.

24. The level of trip generation resulting from the Building's increased height and added commercial FAR on the Property, based on the Applicant's proposal, would not adversely impact access to neighboring properties.

25. The traffic impact of the garage on roadways leading to it equates to one car every 3 minutes during the hour of peak traffic, which the Board finds to be insignificant.

26. The Applicant proposes to implement elements of "green building" design and to seek LEED Certification for the Building.

Security Issues

27. The Architect of the Capitol, after consulting with the Senate Sergeant at Arms, opposed the grant of the variance on security grounds because it would offer sight lines from the roof and penthouse of the new building to the Senate wing of the Capitol.

28. The distance from the roof of the proposed new building to the Capitol is significant – approximately one-third of a mile, or 1695 feet.

29. There exist 5 buildings with essentially equivalent lines of sight and ranges to the Capitol.

30. At least 2 of these 5 existing buildings have shorter ranges to the Capitol, one of approximately 1280 to 1320 feet, and one of approximately 1600 feet.

31. The proposed new building will eliminate the sight line to the Capitol from some formerly exposed rooftop areas, such as that from the Hyatt Hotel just to the north of the proposed building.

32. The proposed new building will be used solely, or primarily, by a single tenant, as opposed to many other buildings in the neighborhood that are open to the public and/or have transient and anonymous occupants and visitors.

33. Security measures can be taken to mitigate any security risks, including perimeter security, control of building and roof access, rooftop security precautions, and obscurement of the Capitol Building and its interior.

CONCLUSIONS OF LAW AND OPINION

The Applicant is seeking variance relief, pursuant to § 3103 of the Zoning Regulations, from the maximum height allowed in the C-3-C District. The C-3-C zoning district is designed to permit medium-high density development, including office, retail, housing and mixed use; it permits a maximum height of ninety feet (90') The Applicant seeks a forty foot height variance to 130 feet.

The requested relief is for an area variance, the granting of which requires proof of a practical difficulty arising out of some extraordinary or exceptional situation or condition of the Property. The Applicant must therefore demonstrate that compliance with the Zoning Regulations results in practical difficulties due to such extraordinary or exceptional situation or condition. The Board must also find that the relief requested can be granted without substantial detriment to the public good or substantial impairment to the zone plan.

Uniqueness of the Property

The first criterion for the granting of an area variance is that the property is affected by an extraordinary or exceptional situation or condition. This is often termed the "uniqueness" test. The District of Columbia Court of Appeals has stated that the

> threshold requirement to show that the property is unique with respect to the hardship or difficulty asserted as grounds for the variance means the property owner must present proof that "the circumstances which create the hardship *uniquely* affect the *petitioner's property* * * * ." (emphasis in original).

Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. Of Zoning Adjustment, 534 A.2d 939, 941-942 (D.C. 1987), quoting *Taylor v. District of Columbia Bd. of Zoning Adjustment,* 308 A.2d 230, 234 (D.C. 1973). The uniqueness requirement "insures relief for problems peculiarly related to the * * * land or structure, and not shared by other property in the neighborhood, thus avoiding a de facto amendment of zoning laws." *Russell v. Board of Zoning Adjustment,* 402 A.2d 1231, 1235 (D.C. 1979). The Property is unique in several respects. It is an oddly-shaped, 5-sided parcel with an unusually deep area of public space adjacent to its New Jersey and Louisiana Avenue frontages. Adding to the uniqueness of the Property is the V-shaped configuration of the existing improvements, as well as the historic status of the Acacia building and the stand-still agreement with DCPL.

Any construction on the Property must be sensitive to the historic nature of its current improvements and must be designed not to overwhelm them. Further, the Acacia Building is not merely historic, but it has floor-to-floor heights of 15 feet, 4 to 5 feet higher than the typical floor-to-floor heights in new construction. *See, e.g., Capitol Hill Restoration Society, Inc. v. Board of Zoning Adjustment, supra,* at 942. (A condition inherent in the structures built upon the land may serve to satisfy an applicant's burden of demonstrating uniqueness).

There are also two below-grade factors contributing to the uniqueness of the Property. The Property lies over the Tiber Creek combined storm sewer, which is still in use today and would be prohibitively costly to relocate. Also, running along the northern edge of the Property, and therefore directly under and adjacent to the northern side of the proposed building, is a Metro tunnel. These unusual subterranean features, as well as the above-grade conditions discussed above, combine to create the extraordinary or exceptional situation or condition necessary to satisfy the first prong of the variance test.

Practical Difficulties Arising Out of Uniqueness

The exceptional and unique conditions presented by the shape of the Property, the location of the improvements on the Property, the historic nature of the Property, and the location of the Tiber Creek and Metro tunnels result in practical difficulties in designing an efficient building which fully complies with the Zoning Regulations. Moreover, full compliance with the regulations would render development of the Property economically infeasible, particularly given the increased cost associated with designing around the historically sensitive structures and designing the parking garage around the limitations imposed by the Tiber Creek and Metro tunnels. Consideration of the economic viability of the proposed project is relevant to the Board's analysis of the practical difficulty aspect of the area variance requested. *See, e.g., Tyler v. District of Columbia Board of Zoning Adjustment,* 606 A.2d 1362, 1366 (D.C. 1992). (The court states that "evidence of economic justification ... may indeed be considered in deciding whether area variances should be granted.)

The Acacia and Annex Buildings currently use only 3.5 FAR of the 6.5 to 9.0 FAR available on the Property. They form a V-shape, however, leaving only an oddly-shaped area for any additional improvements on the Property. Two options for additional improvements would be adding additional floors to these buildings (i.e., increasing the height of one or both to a height of 110 feet through TDRs (assuming this could be done) and/or constructing an addition in the location of the existing parking garage. The historic nature of the Acacia Building precludes adding additional floors, indeed, the idea was rejected by the Commission of Fine Arts when proposed by the former owners of the Property. This leaves only the possibility of a new building in the place of the existing parking garage and adding underground parking. This solution, however, is not simple and is fraught with practical difficulties due to the conditions underneath the Property, the historic nature and extremely high floor plates of the existing buildings, and constraints on the use of matter-of-right density.

The Tiber Creek storm sewer tunnel runs through the middle of the property, making it difficult to design an efficient below-grade garage. Not only must the Applicant construct a below grade design that does not encroach into the Creek, but it must also construct a complex and expensive slurry wall to support the Creek. This narrows the area of construction and pushes density vertically rather than horizontally.

Also, because of the location of the Creek, the southeast corner of the proposed new building is truncated and requires a special structure. The presence of the Metro tunnel also affects the design of the below grade parking garage in that the garage cannot encroach into the zone of influence of the tunnel. Consequently, the deeper the garage to provide the required parking, the further from the tunnel it needs to be.

As a result of these factors, the six levels of the garage below result in smaller and smaller, and therefore less efficient, garage plates. This factor further limits the flexibility and increases the cost of construction of the below-grade garage. Due to all the above-named factors, the garage configuration will be less efficient than the typical efficiency rate of 375 square feet of space per parking space.

The proposed garage will require 450 square feet per parking space. This will result in a premium construction cost of over $2.5 million. Further, the sheeting, shoring, underpinning, and construction of slurry walls necessitated by the presence of the two below-grade tunnels will increase the garage cost by approximately $2 million.

The height variance, allowing above-grade development to the greatest extent possible, is requested to help offset these increased costs associated with the Property's unique aspects.

The historic nature of the existing improvements and the stand-still agreement with DCPL strictly limit the room and flexibility available for any additional development of the Property. In addition to being precluded from adding additional floors to the existing buildings, any addition must be stepped back and situated so as to defer to the historic buildings.

Ideally, a new building or addition would match the 15' floor plates of the existing buildings, but in reality, this would result in a significant loss of gross floor area and potential failure to meet the needs of the existing (or any potential) tenant. Therefore, in order to maximize the gross floor area to the extent possible within the limited envelope, the proposed new building will be connected to the existing buildings via a seven (7) story triangular atrium addition to be constructed in a portion of the current courtyard. The floor plates of this atrium will be aligned with the 15' slab-to-slab floor heights in the Acacia Building. The proposed new office building's 11'2" slab-to-slab floor heights will not align with either the floors in the atrium addition or in the existing Acacia Building. Instead, there will be a series of ramped skywalks connecting various floors of the atrium addition to various floors of the new office building. The area between the new office building and the existing Acacia Building and Annex will be covered with a glass atrium roof.

Given the above-and underground constraints on the footprint of the proposed new building, the height variance is necessary to gain approximately an additional 50,000 square feet of gross floor area. Without the variance, this additional 50,000 square feet would be lost, at an economic loss of approximately $7.5 million.

The Board concludes that the extraordinary or exceptional situation or condition of the Property results in practical difficulties for the Applicant. The unique conditions of the Property render full compliance with the Zoning Regulations unduly burdensome and economically infeasible.

No Substantial Detriment to Public Good or Impairment of Zone Plan

The property is located in the Downtown East Receiving Zone, where the Zoning Regulations authorize a matter of right height of 110 feet in conjunction with the purchase of development rights. It may therefore be presumed that the Commission found that buildings that reached that height would not impair the zone district. Thus, when addressing this prong, a height of 110 may be viewed as presumptive compatible with the zone district.

There are several buildings in the immediate vicinity of the Property that are higher than 110 feet, for example, the Hyatt Hotel, just across the street to the north of the Property, has a roof elevation of 135 feet. Partially surrounding the Property is the Hotel-Residential Overlay District, which permits a matter-of-right height of 130 feet. *See,* 11 DCMR § 1101.6(a). Thus, the requested height of 130 feet will not dwarf nearby buildings, and is commensurate with building heights in the neighborhood. The Acacia Building itself is 113.5 feet high. Therefore, the proposed relief is consistent with the zone plan and map.

There is limited development immediately around the Property as it is surrounded on three sides by green space. Beyond this green space, the neighborhood hosts high density office and commercial uses. The proposed new building will improve the street experience of pedestrians walking by the project by providing a more animated streetscape experience. Furthermore, the addition has been designed to be sensitive to the historic nature of the Acacia Building. As designed, the construction of the atrium addition and new building in place of the existing above-grade parking garage will be an enhancement to the surrounding neighborhood.

The proposed project replaces an above ground parking structure with a new office building while continuing to provide sufficient parking underground, thereby not causing any adverse impact on local traffic or parking. The project is also a mere two blocks from Union Station, with its metro and bus access. The Applicant also intends to incorporate "green building" aspects into the project and to seek LEEDs certification, thereby enhancing, rather than impairing, the public good.

The primary concern with the project is the potential for a security risk to the Capitol Building. The Architect of the Capitol submitted a letter in opposition to the requested height variance stating that he had consulted with the Senate Sergeant at Arms, and that, in their opinion, the lines of sight from the roof and penthouse would present a security risk to the Senate wing of the Capitol. The letter, did not, however, expound on what type of security risk is posed, or whether there were any possible mitigating measures to be taken. The Architect of the Capitol did not request party status nor participate in the hearing. It is therefore difficult for the Board to specifically address the concerns raised.

It can be inferred from the letter that the Sergeant at Arms and the Architect of the Capitol are concerned with the possibility that a sniper could perch himself on the roof of the proposed new building and fire into the Capitol Building In anticipation of this concern, the Applicant hired a well-known security consulting firm to analyze the situation and the potential for security risks if the height variance were to be granted. *See, generally,* Exhibit No. 29. While the consulting firm acknowledged that a sniper threat is "legitimately credible," it pointed out that such a threat is similarly credible, indeed perhaps more credible, from other nearby buildings. The security consultant considers the range from the proposed new building to the Capitol to be "significant," as it is approximately a third of a mile, or approximately 1695 feet long. The consultant's analysis points out that there are five other office buildings and a hotel which would provide "essentially equivalent line[s] of sight and firing range[s]" to the Capitol as would be available from the proposed new building. In fact, two of these buildings have shorter ranges to the Capitol Building. The more southerly section of the existing building at 101 Constitution Avenue has a roof elevation of 130 feet and a range of approximately 1280 feet to the Capitol, while its northern section has a roof elevation of 110 feet and a range of approximately 1320 feet. The building just north of 101 Constitution Avenue has a roof elevation of 122 feet and a range of approximately 1600 feet to the Capitol. The Acacia Building itself, while lower in height than the proposed building, has a shorter range to the Capitol.

The consultant's analysis further points out that the greater height requested for the proposed new building will act as a screen between the Hyatt Hotel and the Capitol Building, by reducing the sight lines from the hotel to the Capitol. In this way, the granting of the height variance may actually enhance security near the Capitol, for the security analysis opines that "[t]he hotel is a far more attractive location to initiate a sniper assault, as the anonymity of its occupants and their activities are indigenous to the hotel's operation."

It appears that the potential for a sniper to make use of the roof of the proposed new building is a possibility. It appears, however, to be a remote possibility, which can readily be mitigated in three ways: rooftop design precautions, control of access to the building and to the roof, and obscurement of the target building. Intelligent and security-minded rooftop design can prevent a sniper from accessing the roof and from having sufficient time to set up the necessary equipment. The consultant's analysis provides concrete suggestions as to these design modes:

> [t]his is readily accomplished through the specification of ballistic and forced entry rated doors, frames, and hardware that access the roof. The use of commercial motion detection and video surveillance equipment routinely provide detection and assessment of these secure access protocols and should be part of such a design to ensure its effective operation. ... The use of a competently designed surveillance system can assure that such [sniper] activities do not go undetected. Furthermore, a conscientious physical security design of the roof should preclude areas of undetectable refuge. Also, it is likely that the architects can develop a scrim and/or other form of obscurring fencing on the roof at some distance inboard from the parapet, which would add another layer of significant delay by preventing the sniper from having a clear of sight and convenient setup point for target acquisition.

Exhibit No. 29, at 3.

Any potential security threat can be further mitigated by a careful control of persons entering the building and/or accessing the roof. In this regard, the consultant's report recommends "the issuance of ID credentials, the use of access control systems, security and concierge staffing, video surveillance, door monitoring systems, and other physical and electronic security measures." Exhibit No. 29, at 4. All of these measures are reasonable, particularly in light of the fact that the proposed building will be housing, at least for the foreseeable future, only one tenant, the law firm of Jones Day. Although the building will be, in a sense, "open" to the public, it appears reasonable that it can be managed so as to control the inflow of pedestrian traffic.

Lastly, the consultant recommends obscuring the target individuals within the Capitol Building. This can be done with implementation of landscaping to preclude a line of sight from any of the nearby buildings to the Capitol. The Capitol Building itself can put effective screening elements into place.

In light of the above, the Board agrees with the security consultant and the Applicant that the remote risk to one building, even a building as singularly important as the Capitol, cannot be allowed to dictate the zoning and design mandates for an entire neighborhood.

The Board does not wish to appear dismissive of the Architect of the Capitol's concerns. But the Board is limited to what is in the record, which consists of a letter expressing the Architect of the Capitol's concerns against which the Board must consider a substantial and persuasive presentation from the Applicant's security consultant. Nevertheless, the Board expects the applicant to continue working with the Senate Sergeant at Arms on security issues of concern to that office and implement reasonable security measures such as those mentioned in this order.

For all the foregoing reasons, the Board concludes that the relief requested also meets the third prong of the variance test. It can be granted without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the Zone

Plan as embodied in the Zoning Regulations and Map.

The Commission is required under section 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990, (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001) to *give great weight* to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the applications persuasive.

Under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Code § 1-309.10(d)(3)(a)), the Commission must give great weight to the issues and concerns raised in the written report of the affected Commission. While the ANC indicated its support for the Application, it did so contingent upon the applicant seeking LEED certification for the building. Although the Board favors such action, and the Applicant has agreed to do so, the Board has no authority to condition its order upon a requirement, such as LEED certification, that is not directed to mitigating a potential adverse impact of the use.

In light of the foregoing, the Board **ORDERS** that the application be and the same is hereby **GRANTED.**

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

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

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

FINAL DATE OF ORDER: APR 0 6 2005

UNDER 11 DCMR 3125.9, "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 FOR THE BOARD OF ZONING ADJUSTMENT."

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

BZA APPLICATION NO. 17271

As Director of the Office of Zoning, I hereby certify and attest that on APR 0 6 2005 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Richard B. Nettler, Esq.
Robins, Kaplan, Miller & Ciresi LLP
1801 K Street, N.W., Suite 1200
Washington, D.C. 20006

Chairperson
Advisory Neighborhood Commission 6C
P.O. Box 77876
Washington, D.C. 20013

Commissioner 6C09
Advisory Neighborhood Commission 6C
P.O. Box 77876
Washington, D.C. 200013

Sharon Ambrose, City Councilmember
Ward Six
1350 Pennsylvania Avenue, N.W., Suite 102
Washington, D.C. 20004

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

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

Alan Bergstein, Esq.
Office of the Attorney General
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning