Application No. 17324 of DC Department of Housing and Community Development[1], pursuant to 11 DCMR §3104.1, for a special exception to extend a use permitted in the lesser restrictive zone into a more restrictive district under §2514 and pursuant to 11 DCMR §3103.2, a variance to extend the lesser restrictive use into the more restrictive zone by more than 35 feet under §2514.2(a), and a variance to allow the construction of two or more principal buildings or structures on a single subdivided lot that is located within 25 feet of a residence district under §2516, to allow the construction of a new shopping center in the C-2-B, R-5-A, and R-3 Districts at premises 1501 Alabama Avenue, S.E. (formerly Camp Simms Military Reservation) (Square 5912, Lot 804).

HEARING DATE: May 24, 2005
DECISION DATE: June 7, 2005

SUMMARY ORDER

SELF-CERTIFIED

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

THE APPLICATION

The application proposes to create a new shopping center, to be known as the Shops at Park Village, along Alabama Avenue, SE on land that was formerly the Camp Simms Military Reservation. The anchor and centerpiece of the development will be a Giant Food grocery store. The other components of the shopping center will be a building pad site, suitable for a restaurant, and an expansion of an existing strip shopping center.

Preliminary Matters

The initial application sought special exception relief from the Board of Zoning Adjustment (the "**BZA**" or "**Board**") under Title 11 §2514 of the D.C. Municipal Regulations in order for the proposed Giant Food grocery store structure to cross the Zone District boundary into the R-5-A zoned portion of the property, and variance relief from

[1] The property owner is the District of Columbia, acting by and through the Department of Housing and Community Development. CHR, LLC is the contract purchaser and Applicant.

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11 DCMR §2514.2(a) which limits the extension of the grocery store use to only 35 feet into the R-5-A District. Initially, the proposed grocery store structure was to extend approximately 55 feet into the R-5-A Zone District. Prior to the public hearing, the Applicant, based on consultation with the Office of Planning ("OP"), amended the application so that the location of the Giant Food grocery store will only extend 33.95 feet into the adjacent R-5-A Zone District. Therefore, variance relief from §2514.2(a) is not necessary.

At the public hearing, the Board determined that the proposed three separate structures of the shopping center (the grocery store, the building pad site, and the strip shopping center) are permitted to be developed as a matter-of-right in accordance with 11 DCMR §3202.3, which states in pertinent part,

> A building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record . . .
>
> Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure.

Therefore, the Board determined that variance relief from §2516 was not necessary and that the Applicant only needed special exception relief pursuant to §2514 in order to develop the Shops at Park Village.

Notice of Public Hearing

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission ("ANC") 8B, OP, and the owners of property within 200 feet of the site. The Applicant posted placards on the property regarding the application and public hearing and submitted an affidavit to the Board to this effect.

Requests for Party Status

There were no requests for party status in this application.

ANC 8B

The site of this application is located within the jurisdiction of ANC 8B, which is automatically a party to this case. The Single Member District Commissioner for the property, and the Chairperson of ANC 8B, filed a resolution in support of this application.

Government Reports

The application was referred to OP and the Department of Transportation ("DDOT") for review and report. OP submitted a report recommending approval of the application. DDOT did not submit a report in this application.

DECISION

The Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR §3104.1. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§3104.1 and 2514, that the proposed extension of the grocery store use into the adjacent R-5-A District will have no adverse effect upon the present character and future development of the neighborhood. The Board finds that the site plan, landscape plan, loading operations plan, and lighting plan submitted by the Applicant into the record of this case, and the conditions of approval noted below, are sufficient to protect adjacent or nearby properties.

Pursuant to 11 DCMR §3100.5, the Board has determined to waive the requirement of 11 DCMR §3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law. It is therefore **ORDERED** that this application be **GRANTED** subject to the following **CONDITIONS**:

1. Giant Food shall establish a "Quiet Zone" for the loading dock area of the grocery store. The Quiet Zone designation prohibits deliveries between the hours of 10 PM and 6 AM. Trucks will also be prohibited from idling in the loading dock area.

2. The name and telephone number of the Giant Food store's general manager shall be provided to the nearby Advisory Neighborhood Commissioners. The property manager for the property shall provide contact information to the nearby Advisory Neighborhood Commissioners.

VOTE: **5-0-0** (Curtis L. Etherly, Jr., Ruthanne G. Miller, Geoffrey H. Griffis, John A. Mann, II, and Gregory Jeffries to approve)

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: JUN 17 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.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 17324

As Director of the Office of Zoning, I hereby certify and attest that on JUN 17 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:

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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning