GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17431-A of King's Creek, L.L.C., pursuant to 11 DCMR § 3104.1 and 3103.2, for a special exception to allow a building height of 50 feet in the Reed Cooke Overlay, under § 1403, and a variance to permit an addition to a nonconforming structure under subsection 2001.3, a variance from the floor area ratio requirements of § 402, and a variance from the court requirements under § 406, to allow an addition to, and conversion of, an existing building, for residential use in the RC/R-5-B district at premises 2329 and 2335 Champlain Street, N.W. (Square 2563, Lots 103 and 816).

HEARING DATE:	February 28, 2006 and March 14, 2006
DECISION DATES:	May 2, 2006
DECISION ON MOTION FOR MINOR MODIFICATION:	November 18, 2008

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17431-A
EXHIBIT NO. 60

ORDER GRANTING MODIFICATION OF APPROVED PLANS AND EXTENSION OF ORDER IN APPLICATION NO. 17431

Request for modification of approved plans

On October 31, 2008, the Applicant submitted a letter with the accompanying filing fee requesting a modification to the plans approved in BZA Application No. 17431. Copies of the letter were simultaneously served on the Office of Planning, Advisory Neighborhood Commission 1C, and John Holmes, a party in opposition during the original proceedings. The original Board approval (Application No. 17706) was for a special exception and several variances to permit the adaptive reuse of an existing commercial building for residential purposes, and was granted on November 28, 2006. Under § 3130 of the Zoning Regulations, the Order granting approval was to expire on or about November 28, 2008.

The Applicant also requested that the Board waive the rule under § 3129.3 requiring requests for modification to be filed not later than six (6) months after the date of the final order approving the application. The Applicant contended that since the time of approval, the District's residential real estate market had experienced a severe downturn. As a result, in July 2008, Mr. Kostelac, builder/manager of King's Creek LLC (the original Applicant), signed over the Partnership to the lender, Gourley & Gourley LLC Private Banking. The lender (the current

Board of Zoning Adjustment
District of Columbia
CASE NO. 17431
EXHIBIT NO. 60

Applicant) has undertaken a redesign of the project and has spent a considerable amount of time attempting to reduce construction costs and improve the economics of the project, particularly given the downturn of the global economy, the credit freeze in the banking world and the difficult housing market. As a result, the Applicant was unable to file this request within six (6) months of the date on which the order was approved. In light of the above circumstances, the Applicant has demonstrated the good cause necessary to waive the 6 month time limit under § 3129.3. In addition, the Board finds there will be no prejudice by accepting the motion at the current time. Therefore, the Board waives the requirement under § 3129.3 and will consider the Applicant's request for modification.

The proposed modifications

The project approved by the Board in Application Number 17431 was a new apartment building that was designed and planned as a condominium project. Thus, all of the residential units were intended to be offered for sale. However, because the condominium market in the District of Columbia (and nationwide) has stalled and is predicted to not recover for several years, the Applicant has been forced to redesign the project and convert it from condominium to a rental apartment building and to undertake numerous and significant cost-cutting efforts in order to reduce construction costs and make the units affordable to the rental market. Accordingly, the Applicant requests permission to make the following modifications to its plans:

1. All previously approved five (5) rooftop hot tubs for five (5) of the six (6) residential units located on the fourth floor of the building have been eliminated. Although these changes are not visible from the street level, it is believed that the elimination of the private rooftop hot tubs reduces parts of the total bulk of the building.

2. In order to accommodate smaller units more typical of rental apartment building, all previously approved private penthouse levels and rooftop terraces of each of the fourth floor residential units have been eliminated and, instead, the revised penthouse level will be accessible to all residents. Accordingly, all stairs to private rooftop terraces previously located within the fourth floor residential units have also been eliminated. Consequently, stair #2 has been modified to extend to the penthouse level. A new stair (stair #3), allowing a second means of egress, has also been added between fourth floor and the penthouse level. The revised penthouse level houses a resident's lounge, a fitness room and two (2) ADA compliant restrooms and allows residents to access the entire rooftop terrace. The total area of the revised penthouse level has been reduced by four hundred (400) square feet from that previously approved. Although these changes are not visible from the street level, it is believed that the reconfiguration and reduction in size of the penthouse level will enhance the potential economics of the project.

3. As a result of the addition of a new staircase (stair #3) and the elimination of the private rooftop terraces and private penthouse levels, all six (6) fourth floor residential units have undergone floor plan reconfiguration to accommodate the relocation of mechanical units and provide adequate space for circulation within the units.

The ANC's request for a postponement

Advisory Neighborhood Commission ("ANC") 1C submitted a letter dated November 12, 2008, (Exhibit 58) to the Board requesting it to postpone the consideration of this motion. The ANC explained in its letter that, while it had met on November 5, 2008 with a quorum present, the ANC needed "sufficient time to allow notice and review by members of the community at large, and to allow full consideration by vote of any proposed alterations, or changes...at the next general session meeting of ANC 1C on December 3, 2008". (Exhibit 58). No one appeared on behalf of the ANC at the Board's Decision Meeting[1] on November 17, 2008. However, the Applicant appeared and explained that a time delay in the Board's decision would create an undue financial hardship and effect the viability of the project. The Applicant also explained that the latest revisions to the rooftop terrace were submitted to the Board in direct response to the wishes of the ANC, as expressed to the Applicant at an ANC meeting. After due consideration of the ANC's request, the Board denied the request for postponement, finding that the ANC had not established good cause to postpone and that the Applicant would be prejudiced by a delay. The Board also noted that the ANC had supported the original application.

The request to modify the plans is granted

The Board finds the requested modifications are minor in nature and do not change the material facts that the Board relied upon in approving the application. No additional zoning relief is needed as a result of these minor modifications. The reconfigurations do not affect the exterior design of the building as viewed from street level, nor do they increase the footprint of the building. They do not increase the BZA approved FAR, lot occupancy, building height or any other zoning requirement and do not impact the number of units nor that of the parking spaces provided in the building. (See, OP Supplemental Report, Exhibit 57). The modification request is a direct result of the conversion of the project from a condominium regime to a rental building. Furthermore, the Board agrees with the Applicant that no sacrifices have been made to the aesthetics or quality of the project neither with these requested changes nor with the conversion from a condominium regime to a rental apartment building.

Extension of Order in Application No. 17431

Finally, the Board notes that the original approval will expire on or about November 28, 2006. Although the request for a modification did not expressly request an extension of time, the Board finds that such a request was implicit. As to the merits, the same change in economic climate that led to the modification of the approved plans also justifies the grant of additional time to

[1] The Board's Rules provide that modification requests shall be decided based upon the papers. Thus, no hearing is required. 11 DCMR 3129.5

complete the project. Thus, the Board extends the approval of Order 17431 for two years following the date of this Order.

It is therefore **ORDERED** that the request for modification of approved plans in Order No. 17431 be **GRANTED** in accordance with Exhibit No. 59B-1- Plans, and Order No. 17431 is extended for two years from the date of this Order.

VOTE (NOVEMBR 28, 2008) ON APPLICATION NO. 17431:

3-0-2 (Ruthanne G. Miller, Marc D. Loud and Shane L. Dettman to Grant, no other Board members participating.)

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

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

FINAL DATE OF ORDER: DEC 02 2008

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. SG