GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17521 of 601-645 H Street Ventures LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirement of section 772 and a variance from the residential recreation space requirements of section 773, and pursuant to 11 DCMR §§ 3104.1 and 1325.1, a special exception from the ground floor level ceiling height provisions under subsection 1324.12, a special exception from the lot occupancy requirements of § 1324.4, a special exception from § 1303.2 to permit a driveway on H Street, a special exception pursuant to § 2514.2 for a thirty-five foot extension of a less restrictive zone district into a more restrictive district, and a special exception under § 1320.4 to allow an addition that increases the gross floor area of an existing building by more than 50% on a lot that has 6,000 square feet or more of land area, in the H Street Northeast Neighborhood Commercial Overlay ("HS") District in the HS/C-2-A and HS/C-2-C Districts at premises 601-645 H Street, N.E. (Square 859, Lot 177).[1]

HEARING DATES: October 10, 2006, November 21, 2006 and December 5, 2006

DECISION DATES: December 5, 2006 and February 6, 2007

DECISION AND ORDER

This application was submitted by 601-645 H Street Ventures LLC (the "Applicant"), the owner of the property that is the subject of this application (the "subject property"). The self-certified application requested special exception and variance relief to allow the construction of a mixed-use residential and commercial development.

The Board held a public hearing on the application on October 10, 2006, November 21,

[1]The relief requested in the original application included only a variance from the lot occupancy requirements of section 772, a special exception from the ground floor-level ceiling height provisions of § 1324.12, and a special exception to allow the construction of a new building on a lot with 6,000 square feet or more of land area, pursuant to subsections 1320.4 and 1325.
The Board, with the consent of the Applicant, amended the application to include the additional relief noted above, but the Applicant subsequently withdrew its request for special exception relief from the ground floor-level ceiling height requirement of section 1324.12. And, on April 6, 2007, the Zoning Commission repealed all the residential recreation space provisions in the Zoning Regulations, therefore, such variance relief is neither necessary nor addressed in this Order.

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2006 and December 5, 2006. At the close of the December portion of the hearing, the Board voted 5-0-0 to grant the application with respect to the following areas of relief: (1) a variance from the lot occupancy requirement of section 772; (2) a variance from the residential recreation space requirements of section 773; (3) a special exception under section 2514.2 to extend the height, use, and bulk regulations of the HS/C-2-C zone district into the adjacent HS/C-2-A district by thirty-five feet; and (4) a special exception from the lot occupancy requirement of section 1324.4. At the decision meeting on February 6, 2007, the Board voted 5-0-0 to grant the remaining areas of relief sought by the Applicant, *to wit:* a special exception from § 1303.2 to permit a driveway on H Street and a special exception under § 1320.4 to allow an addition that increases the gross floor area of an existing building by more than 50% on a lot with 6,000 square feet or more of land area. At the February 6, 2007 decision meeting, the Board also determined that the project was consistent with the intent of the design requirements set forth in § 1324 of the H Street Overlay (other than § 1324.4, for which a special exception had been granted on December 5, 2006), and consistent with all the applicable design guidelines set forth in the *H Street, N.E. Strategic Development Plan* (sometimes referred to herein as "*Plan*"), except three, for which adequate explanations were provided.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated May 11, 2006, the Office of Zoning ("OZ") gave notice of the filing of this application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 6C, the ANC within which the subject property is located, the Single Member District for 6C-05, and the Council Member for Ward 6. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing date in the D.C. Register and, on July 21, 2006, mailed notice of the hearing to the Applicant, ANC 6C, and all owners of property within 200 feet of the subject property.

Requests for Party Status. ANC 6C was automatically a party to this proceeding. The Board received requests for party status from ANC 6A, the boundary of which is within 200 feet of the subject property, the Stanton Park Neighborhood Association ("SPNA"),[2] the 6th & H Street, N.E. Neighborhood Association, and H Street Main Street. The Board found that each of these parties' interests would be uniquely affected by the proposed development and therefore granted all of the requests. All these parties were initially in opposition to the application; however, they continued to work with the Applicant, which was amenable to their requests. After much concerted effort, each party dropped its opposition status and became a party proponent. (*See,* Exhibits No's. 104 & 109 - H St.

[2]At the October 10, 2006 hearing, the SPNA representative stated that the Capitol Hill Restoration Society "will participate through SPNA's party status," but there was no written authorization reflecting this state of affairs.

Main St., Exhibit No. 106 – 6th & H St. Neighborhood Ass'n., Exhibit No. 107 – SPNA, and Exhibit No. 108 – ANC 6A.)

Applicant's Case. The Applicant's case was presented by its attorneys, who called Pryse Elam of Washington Real Estate Partners, the developer of the subject property, and Douglas Carter of Davis, Carter, Scott, Ltd., the project architect, to testify on behalf of the Applicant. The Applicant also presented testimony and evidence from experts in land use planning (Steven E. Sher of Holland & Knight LLP) and traffic management (Martin Wells of Wells & Associates, LLC). Mr. Sher testified that the proposed project satisfied all of the applicable requirements for special exception and variance relief, and Mr. Wells testified as to parking and traffic issues.

Government Reports. The Office of Planning submitted its first report to the Board, dated October 3, 2006. In this report, OP analyzed the Applicant's variance relief requests and determined that the Applicant had met the burden of proof for the variances. OP therefore recommended approval of the granting of the variances. As to the special exception requests, however, OP felt that, as of that date, the Applicant had not met the burden of proof. OP stated, however, that it supported the intent of the project and expected a design solution to be worked out with the neighborhood. Therefore, OP recommended postponement of the Board's public hearing on the application to allow additional design alterations and further review by ANC 6C.

On November 14, 2006, the Office of Planning filed a second report, (Exhibit No. 70), recommending approval of the requested variance and special exception relief for the proposed project. Under its special exception analysis, OP opined that the project would not have any adverse effects on surrounding properties and that the project is generally consistent with the intent of the design guidelines of the *H Street, N.E. Strategic Development Plan*. Under its variance analysis, OP noted that the subject property was affected by exceptional conditions by virtue of its odd shape, split zoning districts, and the presence of existing buildings on the lot. The OP report also indicated that the Applicant would encounter practical difficulties if the Zoning Regulations were strictly applied in this case and that the requested variance relief would not result in a substantial detriment to the public good or a substantial impairment of the intent, purpose, and integrity of the zone plan.

Finally, the Office of Planning filed a supplemental report on November 20, 2006, (Exhibit No. 87), expressing the view that the HS Overlay regulations require substantial compliance with the individual design guidelines set forth in the *H Street N.E. Strategic Development Plan*. In this last report, OP further explained that, as of November 20th, the only design guideline not strictly complied with was the standard of four to eight stories

along the H Street corridor.[3] The Applicant, however, had already agreed to reduce the height of the portion of the building encompassed within the 35-foot extension of the C-2-C zone district from nine to eight stories, and also agreed to provide the community with a justification for leaving the rest of the building at nine stories. The OP report explained that, subject to this justification, the community had "agreed to offer its full support to the zoning relief requested by the [A]pplicant." At that time, some specific elements of building design were still unresolved, and OP requested that the Board put off its decision on design relief until a later date. The Board agreed, hence the decision of certain aspects of the requested relief on December 5, 2006, and the decision on the rest of the relief on February 6, 2007.

The District Department of Transportation ("DDOT") submitted a preliminary report to the Board on November 20, 2006. This report, (Exhibit No. 98), stated that the expected impacts of the proposed development on the surrounding traffic network would be acceptable if certain conditions were imposed on the project. Specifically, DDOT recommended that the Board condition its approval of the application on: (1) a reduction in the number of on-site parking spaces; (2) maintenance of 7th Street as a one-way southbound roadway; (3) installation of a single right-in, right-out driveway to the underground parking garage from H Street; (4) closure of the existing curb cuts on H Street; and (5) the development of a transportation demand management plan ("TDMP") for the development. The report also suggested a number of specific strategies that could be incorporated into the proposed TDMP and stated that DDOT was "comfortable" with the proposed loading facilities off 7th Street, although recommending widening the alley opening as much as possible, up to 25 feet.

On February 2, 2007, DDOT submitted a final report, (Exhibit No. 110), recommending approval of the proposed project subject to the same conditions discussed in its initial report. In this second report, DDOT reiterated its reasons against converting any portion of 7th Street into a two-way roadway, but also gave its tentative support for a mid-block signal and crossing on H Street, at the intersection with the project's driveway/garage entrance. Additionally, the report suggested that the Board require the Applicant to place funds in escrow for the future installation of this mid-block signal and crossing. DDOT concurred with the Applicant's recommendation to install a separate northbound turn lane and signal optimization at the intersection of 6th and H Streets to ease congestion. DDOT also expressed concern that the project was providing too many parking spaces, potentially undermining DDOT's goal of promoting public transit. Finally, the report recommended that the Board further condition its approval on the Applicant's adoption of nine specific transportation strategies, some of which were made conditions to this Order.

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[3]There were actually two other design guidelines with which the project was/is not consistent. *See,* discussion at pp. 38-39, *infra.*

ANC Reports. ANC 6C submitted two reports to the Board. The first report, dated September 20, 2006 (Exhibit No. 25), stated that ANC 6C, at its regularly scheduled meeting on September 13, 2006, voted unanimously to oppose the application. The report cited multiple concerns about the proposed development and requested that the Board postpone its scheduled public hearing in order to allow the ANC and the other interested community groups more time to work with the Applicant.

ANC 6C submitted a second report, dated November 13, 2006 (Exhibit No. 69), which cited the significant progress made in negotiations between the community and the Applicant. The report, however, pointed out that there were still unresolved issues and asked the Board to delay its public hearing on the application until December. The public hearing was begun on November 21, 2006, and continued and concluded on December 5, 2006, and during this whole period, the ANC and other community groups continued to negotiate with the Applicant. In a third, brief communication to the Board, dated November 20, 2006, ANC 6C noted that massing and zoning issues had been resolved but more time was necessary to review and resolve design issues.

By the time of the November 21st hearing, the opposition parties, including ANC 6C, had agreed not to oppose the Applicant's requests for relief, subject to the final resolution of certain, discrete design issues. Therefore, at the December 5th hearing, the chairman of the ANC and the commissioner for the single member district ("SMD") in which the subject property is located both testified in support of the project. In addition, the ANC submitted a letter dated January 20, 2007 in support of the application.

ANC 6A, the adjacent ANC that was admitted as a party to this case. encompasses within it part of the area in the HS Overlay. ANC 6A was therefore concerned with the proper interpretation and implementation of the Overlay and the applicable design criteria. Initially, it too opposed the application, as indicated in its letter of September 26, 2006. ANC 6A, however, like ANC 6C and the other community groups, continued to work with the Applicant and eventually switched its position to one of support for the application, as indicated in its latest, but undated, letter, marked as Exhibit No. 108 in the record.

Persons in Support and Opposition. The Board heard testimony in support of, and in opposition to, the application and received a number of letters expressing support or opposition to the proposed project. All parties in opposition eventually became parties in support and three organizations with local constituencies which had not requested party status also submitted letters or written testimony in support of the application. The Near Northeast Citizens Against Crime and Drugs submitted a letter dated September 7, 2006

in support of the project and stated: "the project furthers the redevelopment objectives for the H Street Overlay area and will be a significant benefit to the community." The Capitol Hill Restoration Society submitted a letter, dated November 17, 2006, confirming its support for the architectural plans submitted by the Applicant that same day. *See,* Exhibit No 99. The Linden Neighborhood Association submitted written testimony supporting the proposed project and the requested variance and special exception relief. *See,* Exhibit No. 95.

FINDINGS OF FACT

Background

1. The subject property is known as 601-645 H Street, N.E., and consists of Lot 177 in Square 859. The entire property is located within the H Street Northeast Commercial Overlay District (the "HS Overlay"), but the underlying zoning of the property is split between the C-2-A and C-2-C zone districts. The zone district boundary line runs through the middle of the property parallel to H Street, approximately 132 feet to its south. The area north of the zone district boundary line is in a C-2-C zone and the area south of the line is in a C-2-A zone.

2. The subject property is not located within an historic district, and none of the existing buildings are listed on the D.C. Inventory of Historic Sites.

3. Square 859 is bounded by 6th Street, N.E. on the west, H Street, N.E. on the north, 7th Street, N.E. on the east, and G Street, N.E. on the south. H Street is ninety feet wide at this location.

4. The subject property is oddly-shaped – like an anvil or a capital "I," with a longer base than top. It includes 109,351 square feet of land area and has approximately 560 feet of frontage along the south side of H Street.

5. The property is currently improved with three existing structures: a five-story office building on the corner of H and 6th Streets (601 H Street, N.E.), another five-story office building on the corner of H and 7th Streets (645 H Street, N.E), and a one-story building, presently used as offices, fronting on H Street, N.E. in the middle of the block between the two five-story buildings.

6. Immediately to the south of the property, at its rear, is a mostly 16-foot wide public alley. Backing onto the southern edge of the alley are the rear yards of row dwellings along G Street, N.E. To the east and west of the property, along both Sixth and

Seventh Streets, are more row dwellings whose rear yards abut the property. All the immediately-surrounding row dwellings are approximately 35 feet in height.

7. The subject property is part of the H Street commercial corridor. To the north of the property, across H Street, are commercial uses. The Squares to the east and west of the subject property are improved by both commercial and residential uses. Union Station is located approximately one-half mile to the west of the property.

<u>The Applicant's Proposed Project</u>

8. The Applicant seeks to develop the property with a mixed-use commercial and residential project. The residential component will include over 312,000 square feet of gross floor area and approximately 240 residential units. The project will also contain approximately 191,000 square feet of office space and 8,000 square feet of ground-floor retail space.

9. Construction of the project will increase the gross floor area of the existing buildings by significantly more than 50%, and the lot area is significantly more than 6,000 square feet (*See,* Finding of Fact No. 4, above), therefore, the Applicant has requested a special exception from the HS Overlay provision at 11 DCMR § 1320.4(f).

10. Three levels of below-grade parking will provide approximately 487 parking spaces for the residential units and the office and retail uses, significantly more than the 206 parking spaces required by the Zoning Regulations. *See,* 11 DCMR § 2101.1.

11. The various community groups requested that the Applicant provide a significant amount of parking for the project itself and for "after-hours" availability in order to help establish the H Street corridor as an evening entertainment destination.

12. Pursuant to the Zoning Regulations, bicycle parking spaces will be provided in a number equal to 5% of the required automobile parking spaces. *See,* 11 DCMR § 2119.2.

13. The proposed project contemplates the retention of the two five-story office buildings and the replacement of the outmoded one-story office building on H Street. The latter will be replaced with a new infill structure with retail uses on the ground floor and residential units above.

14. The new infill structure will provide an above-grade connection between the existing five-story office buildings on either side.

15. The two existing office buildings and the new addition will form a continuous frontage along H Street, within the HS/C-2-C zone district. They will be attached at the rear center, by a continuation of the building at a similar height, to another section of the building at a lower height and situated within the C-2-A zone. The entire project will appear as one building, and is one building for zoning purposes.[4]

16. The ground floor of the new addition along H Street will have a clear floor-to-ceiling height of over fourteen feet, which, pursuant to § 1324.13, allows the portion of the building located in the HS/C-2-C zone district to be constructed to a height of ninety-five feet as a matter of right.

17. The rear portion of the building will be set back 10 feet from the lot lines that run parallel to 6th and 7th Streets, N.E., and 15 feet from the lot line abutting the public alley that runs parallel to H Street, N.E. These setbacks, and their landscaping, will help alleviate any adverse impact of the building on the surrounding row dwellings.

18. The portion of the building located in the area currently zoned HS/C-2-C will rise to a height of ninety-five feet. Within the 35 feet of the HS/C-2-A district closest to the C-2-C district, the building will step down to a height of 85 feet. Continuing toward the rear or southern end of the property, the building will step down again to 50 feet, and then the rear most portion of the building will rise to 40 feet, to reduce the building's impact on nearby row dwellings.

19. The step-downs in height were incorporated into the project at the behest of the neighborhood. The height decrease from 95 to 85 feet causes a loss of two units and the height decrease from 50 to 40 feet causes a further 11-unit reduction in the total number of units compared to the total number of units originally contemplated by the Applicant.

20. Due to the setbacks and step-downs noted in Findings of Fact No's. 17 and 19, and, pursuant to the special exception relief available under 11 DCMR § 2514 permitting an extension of a less restrictive zone district 35 feet into a more restrictive zone district, a portion of the building located in the HS/C-2-A district immediately adjacent to the HS/C-2-C district will be constructed to a height permitted in the HS/C-2-C district (*i.e.*, 85 feet) for a depth of 35 feet south into the HS/C-2-A zone. Within this "extra" height will be place residential units otherwise lost to the setbacks and step-downs.

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[4]From hereon in this Order, the term "building," when used to describe the Applicant's project, shall mean the entire project, as it is one building.

21. Access to the underground parking garage will be provided by two separate driveways: one on 7th Street and one on H Street. The H Street driveway will be located as shown on the plans provided in Exhibit No. 82.

22. The H Street driveway, however, is disallowed by 11 DCMR § 1303.2, therefore, the Applicant has requested special exception relief from that provision of the Zoning Regulations.

23. The H Street driveway will be accessed from an existing curb cut, but the second currently existing curb cut on H Street will be removed.

24. The HS/C-2-A-zoned portion of the subject property will have a lot occupancy of 57.7%, below the maximum of 60% permitted in a C-2-A zone. *See,* 11 DCMR § 772.

25. The HS/C-2-C-zoned portion of the property will have a lot occupancy of 90.9 %, which is over the C-2-C permitted maximum of 80%, hence the requested variance relief from 11 DCMR § 772.

26. The entire lot will have an overall blended lot occupancy of approximately 78%, over the 70% maximum lot occupancy permitted for C-2 districts within the HS Overlay, hence the requested special exception relief from 11 DCMR § 1324.4.

Variance Relief From the Lot Occupancy Requirements of Section 772

Extraordinary Situation or Condition

27. The subject property is the largest parcel of land in single ownership within the HS Overlay District and has a very long street frontage along H Street of approximately 560 feet.

28. The lot is anvil-shaped, with a long "face" along H Street on the north and a parallel longer, but narrower, "base" that backs onto the 16-foot public alley to the south of the property. These two parallel pieces of the property are connected in the center by a section of the lot almost as wide as the "base."

29. The depth of the lot from H Street varies considerably -- from approximately seventy-five feet at the corner of 6th Street, to over 260 feet in the middle of the block, and back down to 132 feet at the corner of 7th Street.

30. The property is the only lot along the H Street corridor in which the commercial zoning extends over 200 feet into the interior of the Square, resulting in the rear of the lot being surrounded by row dwellings on three sides.

31. The subject property is the only lot between Second Street and Florida Avenue that is zoned C-2-C along its H Street frontage and that therefore permits a 90-foot building height.

32. The HS/C-2-C portion of the lot includes a strip of land along H Street that varies in depth from seventy-five feet on the corner of 6th Street, to 132 feet on the corner of 7th Street. This part of the site covers approximately 66,570 square feet of land area. The remainder of the site—which is located south of the C-2-C portion and in the center of the square—is zoned HS/C-2-A and includes approximately 42,781 square feet of land area.

Practical Difficulties

33. The existing office buildings on the corners of the block are only five stories in height. These structures are built out to the property line on H Street and collectively occupy over thirty percent of the lot's total area, affecting the property's available building envelope
34. The project is set back significantly on its south, east, and west sides to protect the light and air to the nearby row dwellings, resulting in a loss of gross floor area and necessitating a deviation from the lot occupancy restrictions of section 772 to make the project feasible. *See*, Finding of Fact No. 17.

35. The height of the project is also being significantly stepped-down toward the southern end of the site, again to protect the light and air of nearby row dwellings, also necessitating a greater-than-permitted lot occupancy to retain project feasibility. *See*, Findings of Fact No's. 18 and 19.

No Substantial Detriment

36. The bulk of the proposed project's footprint is pressed up against H Street, leaving more open space in the southern half of the lot, closer to the residential properties surrounding it on three sides.

37. The project is designed to protect the light and air of adjacent residential buildings through the use of setbacks and reduced height at the rear of the building.

Special Exception Relief to Extend Zone District Boundary Line (§ 2514.2)

38. The Applicant seeks to have the C-2-C zone district and its regulatory provisions extended southward, for the maximum-allowed 35 feet, into what is now the C-2-A zone district.

39. Even with this 35-foot southward extension of the C-2-C zone district, there will still be an area zoned C-2-A approximately 100 feet in width between the extension of the C-2-C zone and the rear alley abutting the southern edge of the subject property, on the other side of which are the rear yards of residences.

40. All portions of the proposed building exceeding the 50-foot maximum height permitted in the C-2-A district will be located entirely in the extension of the HS/C-2-C district.

41. The 35-foot extension of the C-2-C zone district is not out of character with the HS Overlay's vision for the development of the H Street commercial corridor.

Special Exception Relief to Locate a Driveway onto a "Designated Roadway" (§ 1303.2)

42. Because H Street is the "designated roadway" for the HS Overlay District, the driveway on H Street needed to provide vehicular access to the project is disallowed by § 1303.2, hence the Applicant's request for special exception relief from this section. (§§ 1320.7, 1303.2 & 1304)

43. Due to the size of the project and the number of parking spaces being provided, two driveway entrances to the project are safer and more efficient than one. (§§ 1304.1(a) & 1304.1(c)).

44. The driveway access to the project provided from the alley running from Seventh Street will also be used by trucks to reach loading areas, therefore, a second driveway access on H Street enhances safety for all vehicles. (§§ 1304.1(a) & 1304.1(c)).

45. The alley leading from 6th Street into the interior of the Square is too narrow to be used as a second means of access to the underground parking garage. (§§ 1304.1(a) & 1304.1(c)).

Special Exception Relief to Permit over 70% Lot Occupancy (§ 1324.4) and New Construction on a Lot of More Than 6,000 Square Feet of Land Area (§ 1320.4(f)).

Underlying Criteria

46. Special exceptions from the requirements of the HS Overlay, pursuant to § 3104, are permitted if the criteria of both §§ 1304 and 1325 are met. The following Findings of Fact address those criteria and identify the corresponding Title 11 criteria.[5]

47. The proposed project will provide residential units in the Housing Sub-District of the H Street Overlay. (§§ 1304.1(a) & 1320.2(b) & (c)).

48. The proposed project will re-use existing buildings. (§§ 1304.1(a) & 1320.2(e)).

49. The proposed project will provide a variety of uses, predominantly in a continuous pattern along the H Street frontage. (§§1304.1(a) & 1300.3(a)).

50. The proposed project will be constructed to such a scale and height as to be generally compatible with existing buildings and with the surrounding neighborhood. (§§ 1304.1(a) & 1300.3(a) & (c)).

51. The unusual shape and the split-zoning of the property present the Applicant with exceptional circumstances. (§1304.1(b)).

52. The current efforts to revitalize and re-energize the H Street commercial corridor, borne out by the implementation of the HS Overlay, as well as the recent publication of the *H Street, N.E. Strategic Development Plan*, reflect exceptional economic and physical conditions in the immediate area of the subject property. (§1304.1(b)).

53. Vehicular access to the retail/office portion of the project will be through an existing curb-cut/driveway on 7th Street. (§§ 1304.1(c) & 1325.1(c)).

54. Vehicular access to the residential portion of the project will be through an existing curb-cut/driveway on H Street, and a second existing curb cut on H Street will be removed. (§§ 1304.1(c) & 1325.1(c)).

55. To increase pedestrian safety, a mid-block signal and pedestrian crossing will be installed on H Street at the location of the project's driveway on H Street. (§§ 1304.1(c) & 1325.1(c)).

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[5]These criteria are fully described in the Conclusions of Law that follow.

56. The Applicant will install a new northbound turn lane and signal optimization at the intersection of 6th and H Streets to ease already-existing congestion and to mitigate any exacerbation of that congestion caused by the project. (§§ 1304.1(c) & 1325.1(c)).

57. The Applicant is providing the required loading facilities and access to them will be from the alley system at the rear of the subject property, leading onto 7th Street. The Applicant has agreed to widen the alley opening as much as possible to facilitate loading operations. (§§ 1304.1(c) & 1325.1(c)).

58. All parking at the project will be provided underground. Significantly more spaces than required are being provided to avoid any problems with spill-over parking on local streets. (§1325.1(d)).

59. Egress from the underground parking garage, both onto H Street and onto 7th Street, will be limited to right turns only to mitigate any impact attributable to the project on levels of service at nearby intersections. (§§ 1304.1 (c), 1325.1(c) & (d)).

60. The noise to be generated by the project, both the residential and the retail/office components, is expected to be minimal and not in any way out-of-the ordinary. (§ 1325.1(e)).

61. All the nearest residences surrounding the project are separated from it by the 15-foot building setback, the alley, and, in most cases, a rear and/or side yard – a distance varying from approximately 60 feet to approximately 90 feet, further reducing any potential for noise impacts. (§ 1325.1(e)).

62. Any signage on the project will be located exclusively on the upper facades, awnings, and transom windows. Signs will be designed and placed so as not to block visibility into any store, or to be overly obtrusive, nor will they affect more than 20% of any display window. (§§ 1325.1(f) & 1325.2).

63. Any signage will be sensitively designed and will not consist of backlit box signs or neon product advertisements. (§§ 1325.1(f) & 1325.2).

64. The project is designed in a modern style meant to improve and update the H Street corridor, and it incorporates varying textures, depths, and colors, and a quantity of glass, along its exterior walls. (§ 1325.1(b)).

65. The retail façade along H Street is intended to promote sidewalk activity and increase pedestrian movement along the street. (§ 1325.1(b)).

Design Criteria

66. Along with meeting the criteria in §§ 1304 and 1325 (See Finding of Fact No. 47), the project must be consistent with the intent of the applicable design requirements of the H Street Overlay, as set forth in § 1324, and with the applicable design guidelines of the *H Street, N.E. Strategic Development Plan*. (*See,* Exhibit No. 60).

67. More than 75% of the new building's streetwall up to a height of 25 feet will be constructed out to the property line abutting H Street. The exposed side walls of the existing corner buildings are also built out to their respective lot lines. (§ 1324.2).

68. Approximately 75.9 % of the building's ground-level frontage on H Street will be devoted to commercial or other building entrances and to clear or low-emissivity glass display windows. (§ 1324.8).

69. The only security grilles on the proposed building will be the doors leading to the underground parking garage. These doors will have no less than 70% transparency. (§ 1324.9).

70. The proposed development's retail establishments, as well as the residential and office components of the project, will each have a separate public entrance from the sidewalk on H Street. (§ 1324.10).

71. The project's overall design will not preclude the placement of an entrance every 40 feet on average for the linear building frontage on H Street, although the final location of the entrance doors along the building's frontage will not be known with any degree of specificity until retail tenants have been identified. (§ 1324.11).

72. The ground floor of the new infill structure will have a clear floor-to-ceiling height of at least 14 feet. The existing five story office buildings on the site have a floor-to-ceiling height of 12 feet, six inches on the ground floor. (§ 1324.12).

73. Any projection signs on the building will have a minimum clearance of eight feet above the sidewalk and 14 feet above any driveway. Such signs will project no more than three feet, six inches from the face of the building and will end a minimum of one foot behind the curb line. (§ 1324.14).

74. Façade panel signs will not be placed so as to interrupt windows or doors and will project no more than 12 inches from the face of the building. (§ 1324.15).

75. There will be no roof signs on the building. (§ 1324.16).

76. The proposed project will substantially comply with the design guidelines set forth in the *H Street N.E. Strategic Development Plan*. (*See,* Exhibit No. 60). The subject property is located in the Western Gateway portion of the *Plan*, which designates it for infill development, ground-floor retail uses, and/or a large-scale residential development. The *Plan* states that the additional residential population would complement the proposed development of the Murry's site and provide additional customers for the proposed Central Retail District. (§§ 1325.1(a) & 1325.4).

77. The Applicant submitted a detailed written analysis demonstrating the proposed development's compliance with 55 of the 58 individual design guidelines set forth in the *Plan,* (*See,* Exhibits No's. 92 & 102), and the Board agrees with the Applicant's analysis. (§§ 1325.1(a) & 1325.4).

78. The proposed project will not satisfy three of the design guidelines: (1) the portion of the new building that fronts on H Street will exceed the four-to-eight-story height recommended for Type 1 development on the H Street corridor; (2) the rear portion of the building will not be completely built out to the side lot lines; and (3) the entrance to the underground parking garage will be on H Street. The Board finds that these deviations will not undermine the project's overall consistency with the design guidelines. (§§ 1325.1(a) & 1325.4).

79. The driveway on H Street will be designed with a mid-block signal and crosswalk to encourage safe and efficient conditions for both pedestrians and vehicles. (§§ 1304.1(a) & 1304.1(c)).

80. Adequate public access to the project's parking spaces cannot be provided from 6th Street due to the narrow width of the public alley running from 6th Street to the interior of the Square.

81. The unusual length of the street block and the presence of existing structures on the subject property are exceptional circumstances facing the Applicant, which result in the proposed location of the driveway on H Street. (§ 1304.1(b)).

CONCLUSIONS OF LAW

The Variance Relief

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship 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 the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. The "exceptional situation or condition" of a property can arise out of structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board of Zoning Adjustment,* 320 A.2d 291, 293-294 (D.C. 1974). Relief can only 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." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2.

An applicant for an area variance must make the lesser showing of "practical difficulties," as opposed to the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment,* 287 A.2d 535, 541 (D.C. 1972). Because an area variance is being sought in this case, the Applicant had to make three showings: exceptional condition of the property, that such exceptional condition results in "practical difficulties" to the Applicant, and that the granting of the variance will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The subject property exhibits exceptional conditions by virtue of its unusual size, shape, and split zoning designation, and the presence of existing office buildings on the site. It is the largest parcel of land under single ownership along H Street within the entire HS Overlay District and is the only commercially-zoned lot along the H Street corridor that extends more than 250 feet into the interior of the Square. The lot is surrounded on three sides by row dwelling-type development in the R-4 district.

The building envelope on the site is further squeezed by the two five-story office buildings located on the property. Both the Board and the D.C. Court of Appeals have consistently held that existing buildings on a site can be considered an exceptional condition for variance purposes. *See, Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). In *St. Viator*, which involved a use

variance, the Court held that "it makes no practical difference whether the inability to use property in accordance with the Zoning Regulations stems from topographical conditions of the land itself or from the existence of a structure on the land." *Id.* The Board notes that the building in *St. Viator* was not a historic landmark, nor did the Board or the Court require a finding that the applicant in that case was precluded from demolishing the building because of historic preservation considerations. The existing office buildings in this case constitute one of the exceptional conditions of the property.

The Board has also previously held that a split-zoned site may be considered an exceptional situation or condition for purposes of determining whether variance relief is warranted. *See, e.g., Application No. 14644 of the D.C. Department of Housing and Community Development* (October 7, 1987); *Application No. 14378 of Donohoe Development Co.* (May 30, 1986). The subject property's split zoning and the other factors discussed above represent exceptional or extraordinary conditions meeting the first prong of the variance test.

The Board must next determine whether, due to the exceptional condition of the property, the strict application of the Zoning Regulations will result in a "practical difficulty" for the property owner. *See Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972). The D.C. Court of Appeals has held that the practical difficulty standard requires a showing that "compliance with the area restriction would be unduly burdensome." *Gilmartin v. D.C. Board of Zoning Adjustment,* 579 A.2d 1164, 1170 (D.C. 1990). The height and density of the existing office buildings are significantly lower than what would be allowed as a matter of right within the HS/C-2-C district. Further, the new construction on the HS/C-2-A portion of the property is being set back significantly from the side and rear lot lines and lowered in height to protect the adjacent residential structures on 6th, 7th, and G Streets. The gross floor area lost on this portion of the property had to be recaptured in the HS/C-2-C portion of the property in order to make the project feasible, resulting in an increased lot occupancy in the C-2-C portion of the site. The Applicant cannot capture the density that is allowed on the subject property as a matter of right, comply with the design requirements of the HS Overlay, and protect the light and air of adjacent residential structures without exceeding the lot occupancy requirements of section 772. Therefore, the strict application of section 772 would impose a practical difficulty on the Applicant.

As to the final variance test, at 91% lot occupancy, the C-2-C portion of the site is over the 80% maximum lot occupancy permitted for a building housing a residential use in a C-2-C district, but it is actually within the 100% lot occupancy permitted for a commercial building in a C-2-C district. Therefore, the requested 91% lot occupancy is less than the lot occupancy that could, as a matter of right, exist in the C-2-C-zoned area.

The Board concludes that granting the variance will not substantially impair the intent, purpose, or integrity of the zone plan.

The Special Exception Relief

General Requirements

The Board is authorized to grant a special exception, where, in its judgment, the special exception will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular section(s) pertaining to them. In this case, there are multiple layers of requirements set out in the Zoning Regulations that the Applicant must meet. *All* special exceptions must meet the general tests enunciated in § 3104.1. To be granted a special exception to permit the extension of a zone district boundary line, the Applicant must also meet the requirements listed in§ 2514.2. To be granted a special exception from § 1303.2 to permit a driveway from the "designated roadway," the Applicant must meet the requirements set forth in § 1304, which lists the requirements applicable to all Neighborhood Commercial Overlay ("NCO") special exception requests.

To be granted a special exception from the requirements of the H Street Overlay, along with meeting the criteria in §§ 3104 and 1304, the Applicant must also meet the criteria listed in § 1325, setting forth the requirements applicable within this specific Overlay. There are two sets of design criteria which the Applicant must meet as well. Pursuant to § 1324.1, all construction in the HS Overlay must be consistent with the intent of the design requirements enunciated in § 1324, and, pursuant to §§ 1325.1(a) and 1325.4, all special exceptions to the Overlay must also be consistent with the design guidelines of the *H Street, N.E. Strategic Development Plan*. Therefore, in order to be granted a special exception from the 70% lot occupancy maximum of § 1324.2, and for new construction on a lot of over 6,000 square feet, (§ 1320.4(f)), the Applicant must meet the criteria set forth in §§ 3104 and 1304, and those set forth in § 1325, as well as the intent of both sets of design criteria mentioned above.

Special Exception to Extend Zone District Boundary Line

The Applicant has requested a 35-foot extension of the use, height, and bulk provisions of the C-2-C zone at the front of the property, into the C-2-A zone at the rear of the property. This extension permits the project a greater height and density than would be permitted if this 35-foot area remained zoned C-2-A and helps to enable the Applicant to capture some of the height and density lost at the rear of the site due to the care taken to avoid any significant impact on the surrounding residences. Even with this 35-foot extension, there is still ample space between the new southern boundary of the C-2-C

district and the nearest row dwellings. Between this new southern boundary and the rear walls of these dwellings, there is approximately 100 feet and the 16-foot wide alley, and then the rear yards of the row dwellings. Moreover, the extension of the C-2-C zone will have no effect on the height of the rearmost portion of the building, closest to these dwellings, which will be only 40 feet high, 10 feet lower than the 50 feet permitted in the C-2-A zone.

Other than height, the other consequence of the zone extension that could potentially affect the neighborhood is the extra density that will exist on the site. The density could create parking and traffic impacts in the neighborhood. Parking, however, will be provided for with ample underground spaces available, to avoid spill-over on-street parking in the local streets. Potential effects on traffic also appear to have been well thought-out and measures have been taken to avoid traffic problems, as noted in Findings of Fact No's. 54 through 60. The Board notes that DDOT found "the impacts to the surrounding traffic network acceptable," subject to five conditions, with three of which the Applicant has agreed. *See,* Exhibit No. 110. The two conditions the Applicant did not agree to are a reduction in the number of on-site parking spaces and the placement of money in escrow for the installation of the mid-block traffic signal and crosswalk on H Street. The Board agrees with the Applicant that the number of parking spaces provided should not be reduced, particularly as the community has expressed a desire for parking. The Board also agrees that the Applicant need not put money into escrow, but the Board understands that the Applicant intends to install, and pay for, the mid-block signal and crosswalk.

The Board concludes that the 35-foot southward extension of the C-2-C zone into the C-2-A zone will be in harmony with the general purpose and intent of the Zoning Regulations and will not have adverse effects on the present character or future development of the neighborhood.

Special Exception to Permit Driveway from "Designated Roadway"
Subsection 1303.2 disallows a driveway from a designated roadway to provide access to required parking or loading berths. Pursuant to 11 DCMR § 1320.7, H Street, N.E. is the designated roadway in the HS Overlay for the purpose of § 1303.2. The Applicant proposes to construct a driveway on H Street N.E. to provide access to required parking and so, needs a special exception from § 1303.2's proscription. Section 1304 permits special exceptions from the various NCO provisions. Its first criterion is that the feature for which the special exception is sought will advance the stated purposes of the NCO and will not be detrimental to the safety and welfare of people in the vicinity. Its third criterion requires safe and efficient vehicular access.

The driveway on H Street, along with its associated mid-block signal and crosswalk, advance the purpose of providing safe and efficient conditions for pedestrian and vehicular movement. *See,* 11 DCMR § 1300.3(a). The driveway has been designed to function efficiently and will reduce the number of curb cuts on H Street from two to one, thus creating less conflict with pedestrian ways than exists currently. Also, there are two points of ingress/egress to the underground parking garage, so the H Street driveway will only be accommodating perhaps half the load of entering/exiting vehicles.

The second criterion of § 1304.1 requires exceptional circumstances to "justify" the special exception. This is a rather stringent standard, but as pointed out in Findings of Fact No's. 52, 53, and 82, it is met in this case. With its H Street driveway, the Applicant will provide a midblock signal and crosswalk, helping to mitigate the unsafe mid-block crossings of H Street which are now a common occurrence. The Board agrees with DDOT that a high rate of unregulated mid-block crossings is "compelling evidence that a mid-block signal could provide a safer, controlled crossing location for pedestrians currently jaywalking across H Street." *See,* Exhibit No. 110, at 3. Thus, the exceptional circumstance of such mid-block crossings helps to justify the driveway, because, without it, there would be no mid-block signal and crosswalk provided by the Applicant. Therefore, taken as a whole, sufficient exceptional circumstances exist, both on the property itself, and in the immediate area, to "justify" the grant of a special exception to permit a driveway on H Street, and the Board concludes that such a special exception will be in harmony with the general purpose and intent of the Zoning Regulations and will not adversely affect the use of neighboring property.

Special Exceptions from 70% Lot Occupancy and for New Construction on Lot Over 6,000 Square Feet

These two special exceptions require compliance with the standards of §§ 3104, 1304, and 1325. Individual provisions within each of these sections overlap, and will be discussed together. These two special exceptions must also meet the intent of the two sets of design criteria discussed earlier, and, as in the Findings of Fact, these will be addressed separately from the underlying special exception criteria.

Section 1304.1(a) first states that a requested special exception must advance the stated purposes of the NCO. That is clearly the case here as this project will be one of the anchors around which the revitalization of the H Street corridor will develop. In addition, the project does advance several of the purposes stated both generally for NCO's and specifically for the HS Overlay. The project will include a mixture of building uses with a variety of retail establishments in a continuous pattern at ground level to serve the local

community. (§§ 1300.3(a) & (b)). It will also reuse existing buildings and contain a substantial number of residential units. (§§ 1320.2(b) & (e)).

Next, both § 1304 and § 3104 state generally that the special exception must not affect adversely the use of neighboring property or the safety or welfare of people in the vicinity, and that they must be harmony with the purpose and intent of the Zoning Regulations and Map. The Applicant has successfully mitigated any serious negative impact on the use of nearby property. All the uses proposed here – residential, office, and retail – are matter-of-right uses in these C-2-A and C-2-C zones, and the project itself is in harmony with the purpose and intent of the Zoning Regulations, including with those of the new HS Overlay. The Board concludes that the project will not adversely affect the neighboring community.

Both §1304 and § 1325 require that parking and traffic associated with the project not cause dangerous or objectionable conditions in the neighborhood. *See,* §§ 1304.1(c), 1325(c) & (d). As stated above, the project will provide ample parking, all underground, with two points of ingress/egress, from which only right turns will be permitted. It will have sufficient loading area, the access to which will be separate from those to the parking garage. The Applicant will also install a mid-block signal and crosswalk on H Street and a new northbound turn lane with signal optimization at the intersection of 6th and H Streets. The Union Station transportation hub is approximately one-half mile from the project. The Applicant is also committed to providing carpool, vanpool, and designated carshare parking spaces in the project, as well as to providing information and a point of contact for the public concerning transportation demand management. The Board concludes that the project will not cause dangerous or objectionable parking or traffic conditions.

Subsection 1325(e) also mandates that the project not cause objectionable conditions due to noise. There was no evidence in the record that objectionable conditions due to noise would arise from any of the uses within the project. There is no expectation of inordinate noise. Moreover, the nearest residences are set sufficiently far away and the project will be buffered with landscaping so as to prevent any possible noise disturbance.

Section 1325 also requires that the architectural design of the project and any signs used be compatible with, and enhance, the local urban design character. *See,* §§ 1325.1(b) & (f) and 1325.2. The project has been attractively designed to comport with the local urban design character. Signs to be used on the project will also be compatible with the character of the H Street corridor and with the requirements of the *H Street, N.E. Strategic Development Plan.*

Subsection 1304.1(b) requires that exceptional circumstances exist in order to grant these special exceptions. The Board reiterates that the shape, split-zoned nature, and the unusually long street frontage create an exceptional situation for the Applicant. The re-integration of the existing structures into the project and the need to work within the newly-established parameters, particularly design parameters, of the H Street Overlay and the *Plan,* also pose exceptional circumstances for the Applicant.

The Board concludes that the project meets all the underlying criteria necessary for the granting of the special exceptions for a greater-than-70% lot occupancy and for new construction on a lot of over 6,000 square feet. At this point, the Board will briefly discuss the design criteria set forth in the H Street Overlay itself and in the *Plan*, with which the project must be consistent. *See,* §§ 1325.1(a) & 1325.4.[6]

Section 1324 sets forth the design guidelines of the HS Overlay relevant to this application, all of which are met by this project, as explained in Findings of Fact No's. 68 through 76. The project is also consistent with the design guidelines of the *Plan,* as explained by the Applicant's submissions marked as Exhibits No's. 100, 90, 92, and 102 in the record. The latter two exhibits set forth with particularity how each of the individual design guidelines in the *Plan* will be met by the project.

The first noted exhibit, No. 100, is an explanation of why two of the design guidelines will not be specifically met. The rear portion of the building will not be completely built out to the side lot lines (as would otherwise be mandated by the design guidelines) in order to protect light and air to the adjacent row dwellings. As explained at the hearing, the design guideline mandate of no side setback works to avoid gaps between buildings that front along H Street but do not extend deeply into the interior of the Square from that H Street frontage. In this case, because the property and the building extend deeply into the Square, they are surrounded on three sides by row dwellings that need to be protected from any substantial impairment of access to light and air, hence the decision to employ side setbacks. The other deviation from the design guidelines explained in Exhibit No. 100 is that one of the entrances to the underground garage will be on H Street, at an existing curb cut, to eliminate possible conflicts with vehicles and loading on the narrower 7th Street.

The third design guideline that will not be specifically complied with is the recommendation of a four- to eight-story height. This recommendation, in the case of the

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[6]Due to some ambiguity in the wording of these two sections, it was unclear whether the project had to be consistent with the *Plan* design guidelines, or merely with the intent of those guidelines. The community groups, most notably SPNA, and OP, opined that the former interpretation was correct – that substantial compliance with the guidelines themselves was necessary. In the final analysis, the application ended up meeting all the guidelines but three, the non-compliance of which was adequately explained.

subject lot, conflicts with the underlying C-2-C zoning, which permits a 90-foot height, and the Board is satisfied that the need for the extra story (*i.e.,* a 9-story building) has been adequately presented and explained in the record. (*See,* Exhibit No. 90, explaining the unique attributes of this site which lead to a deviation from the four- to eight-story guideline.) Therefore, even with the three discussed deviations, each done for good reasons, the Board concludes that the intent of all the relevant design guidelines has been met and that the project is consistent with the design criteria of the HS Overlay and those of the *Plan*.

Great Weight.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgment of the issues and concerns of those two entities and an explanation of why the Board did or did not find their views persuasive. The Office of Planning and ANC 6C both recommended approval of the application. The Board concludes that the Applicant has carried its burden of proof in meeting the requirements for variance and special exception relief and therefore agrees with the recommendations of OP and ANC 6C.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application for variance relief pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, and with respect to an application for special exception relief pursuant to 11 DCMR §§ 1304, 1325, and 3104.1, for a special exception from the lot occupancy requirements under subsection 1324.4, a special exception from subsection 1303.2 to permit a driveway on H Street, a special exception pursuant to subsection 2514.2 for a thirty-five foot extension of a less restrictive district into a more restrictive district, and a special exception under subsection 1320.4 to allow an addition that increases the gross floor area of an existing building by more than 50% on a lot that has 6,000 square feet or more of land. Accordingly, it is therefore **ORDERED** that the application be **GRANTED** subject to the following **CONDITIONS:**

1. The proposed project shall be developed in accordance with the architectural plans and elevations prepared by Davis, Carter, Scott, Ltd., dated November 15, 2006 and marked as Exhibit No. 96 of the record in this case, as modified by the elevations and rendering submitted on January 30, 2007 and marked as Exhibit No. 105 of the record in this case. The Applicant is allowed flexibility as to the design elements of the building, as long as such flexibility does not affect the zoning relief granted herein or result in the need for further relief;

2. The Applicant will provide a total of five carpool and vanpool parking spaces on site;

3. The Applicant will provide four designated carshare parking spaces in the office and retail portion of the parking garage;

4. The Applicant will provide each residential unit with a one-time subsidy of $35 for membership in a car-sharing plan;

5. The Applicant will provide website hotlinks to CommuterConnections.com and goDCgo.com on its developer and property management websites;

6. The residential component of the development will include an on-site business center available to residents, which will provide access to copier, fax, and Internet service;

7. The Applicant will provide each new residential lessee with a complimentary SmartTrip card with $20 metro fare upon move-in;

8. The Applicant will designate a member of the building management as a point of contact for coordinating and implementing transportation demand management obligations; and

9. The Applicant will distribute transportation demand management informational brochures via lobby kiosks, welcome packets, and bulletin boards.

VOTE ON DECEMBER 5, 2006, FOR VARIANCE FROM LOT OCCUPANCY (§ 772), SPECIAL EXCEPTION TO EXTEND ZONE DISTRICT BOUNDARY LINE (§ 2514.2), AND SPECIAL EXCEPTION FROM LOT OCCUPANCY (§ 1324.4):

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

VOTE ON FEBRUARY 6, 2007 FOR RELOCATED CURB CUT (§ 1303.2) AND SPECIAL EXCEPTION TO PERMIT ADDITION OF MORE THAN 50% ON LOT OF MORE THAN 6,000 SQUARE FEET (§ 1320.4):

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

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

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: AUG 21 2007

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOME 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 § 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.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

LM