District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Washington, D.C. 20001

GARLAND F. PINKSTON
CLERK OF COURT

Telephone: 879-2700
Area Code 202

September 3, 2004

04-AA-1056 WaterGate East Committee Against Hotel Conversion to Co-Op Apartments, et al
vs. District of Columbia Zoning Commission

District of Columbia Zoning Commission
Jerrily Kress, Director
441 4th Street, N.W.
Suite 210S
Washington, D.C. 20001

Dear Sir/Madam:

Pursuant to the rules of this Court I am transmitting, herewith, a copy of the petition for review filed on September 2, 2004, in the above-entitled case.

Yours very truly,

Garland F. Pinkston
Clerk of Court

By: Ruth Gantt
Information Center Supervisor

cc: Edward Schwab, Esq.

ZONING COMMISSION
District of Columbia
CASE NO. 03-16
EXHIBIT NO. 172

ZONING COMMISSION
District of Columbia
CASE NO.03-16
EXHIBIT NO.172

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DISTRICT OF COLUMBIA
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DISTRICT OF COLUMBIA
COURT OF APPEALS

WATERGATE EAST COMMITTEE)
AGAINST HOTEL CONVERSION TO)
CO-OP APARTMENTS)
c/o Jack H. Olender)
2500 Virginia Avenue, N.W.)
Apartment 1203-S)
Washington, D.C. 20037)

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DISTRICT OF COLUMBIA
COURT OF APPEALS

and)

WATERGATE WEST, INC.)
2700 Virginia Avenue, N.W.)
Washington, D.C. 20037)

Petitioners,)

v.) No. 04-AA-1056

DISTRICT OF COLUMBIA)
ZONING COMMISSION)
Room 210)
441 Fourth Street, N.W.)
Washington, D.C. 20001)

Respondent.)

PETITION FOR REVIEW FROM AN ORDER OF THE DISTRICT OF COLUMBIA ZONING COMMISSION

Petitioners Watergate East Committee Against Hotel Conversion to Co-Op Apartments (the "Committee")[1] and Watergate West, Inc. ("West"), petition for review the order of the District of Columbia Zoning Commission dated August 6, 2004, published in the D.C. Register on August 6,

[1] The Committee has standing to bring this appeal pursuant to D.C. Code § 29-971.07 (2001).

ZONING COMMISSION
District of Columbia
CASE NO. 03-14
EXHIBIT NO. 172

2004, in Case No. 03-16 (Order No. 03-16), granting the request of the applicant Monument Residential LLC, on behalf of BRE/Watergate LLC (collectively "Monument"), for review and approval of a modification to a previously approved Planned Unit Development ("PUD"). The modification sought was the conversion of the Watergate Hotel, and all of its constituent space, to an apartment house of 133 dwelling units. In support hereof, petitioners state as follows:

1. Respondent erred in finding that Monument would be able to carry out the modification, as Monument failed to include in its application Lot 806 (owned by Watergate East, Inc.), which lot is necessary for the proposed conversion from a hotel use to an apartment use and for the provision of the required parking. Respondent further erred in finding that the ownership and/or inclusion of this lot was irrelevant to the ability of Monument to carry out the modification. And, the Zoning Commission's findings on each of these issues are not supported by substantial evidence in the record.

2. Respondent erred in disregarding the June 9, 2004 vote of the members of Watergate East, Inc., against the sale of property on Lot 806 to Monument, and its impact on the support of the modification application by Office of Planning. Furthermore, Respondent's findings regarding the lease of space owned by Watergate East, Inc. are not supported by substantial evidence in the record.

3. Respondent's decision is inconsistent with the Comprehensive Plan.

4. Respondent erred when it granted Monument's request for a modification of a previously approved PUD since the Zoning Commission failed to properly apply the criteria of §§ 2403 *et seq.* of the zoning regulations (11 D.C.M.R.).

5. Respondent erred in granting Monument's modification request by failing to recognize the Watergate Hotel as an amenity to the PUD and by finding that Monument had made adequate assurances for the provision of additional amenities under § 2403.9 of the zoning regulations.

6. Respondent's restriction of the cross examination of Monument's witnesses by parties in opposition was arbitrary and capricious.

7. Respondent's findings are not supported by substantial evidence in the record and they bear no rational relationship to the relief requested and granted.

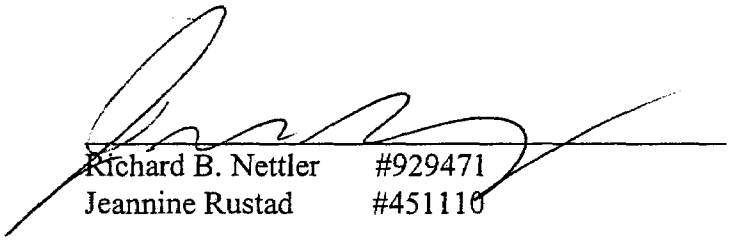
8. Respondent's decision is otherwise arbitrary, capricious, not supported by substantial evidence and in violation of applicable law in that it fails to address all relevant issues raised by those opposed to the request.

9. In adopting Monument's proposed findings of facts, conclusions of law and opinion almost verbatim, Respondent failed to conduct an independent review of the evidence of record and failed to exercise independent judgment

WHEREFORE, Petitioners request that the Court of Appeals vacate the order of the Zoning Commission and direct the Zoning Commission to deny the requested modification to an established PUD.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.



Richard B. Nettler #929471
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Suite 1200
Washington, D.C. 20006
(202) 775-0725
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 2, 2004, a copy of the foregoing Petition for Review was mailed, first-class, postage prepaid, to:

Monument Residential LLC
on behalf of BRE/Watergate LLC
c/o Norman M. Glasgow, Jr., Esquire
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W.
Washington, D.C. 20005

Advisory Neighborhood Commission 2A
c/o Dorothy Miller
Chairperson
Apartment D206
2440 Virginia Avenue, N.W.
Washington, D.C. 20037

Committee of Concerned Owners
c/o Audrey & William Wolfe, Jr.
2510 Virginia Avenue, N.W.
Apt. #702/3-North
Washington, D.C. 20037

Jeannine Rustad

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

BEFORE THE DISTRICT OF COLUMBIA
ZONING COMMISSION
Z.C. Order No. 03-16
Z.C. Case No. 03-16
(Modification to the Approved Planned Unit Development for the Watergate Hotel)
June 14, 2004

Pursuant to notice, the Zoning Commission for the District of Columbia held public hearings on March 1 and March 4, 2004, to consider an application from Monument Residential LLC, on behalf of BRE/Watergate LLC, for review and approval of a modification to a previously approved Planned Unit Development (the "Application"). The requested modification would allow the option to convert an existing 250-room hotel, currently operating as the Watergate Hotel, to an apartment house of 133 dwelling units. The Zoning Commission considered the Application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the Application.

FINDINGS OF FACT

The Applications, Parties, and Hearing

1. On May 7, 2003, Monument Residential LLC ("Monument"), the contract purchaser, on behalf of BRE/Watergate LLC ("BRE"), the owner (together collectively referred to as the "Applicant"), filed an Application for review and approval of a modification to an approved Planned Unit Development ("PUD") for property located at 2650 Virginia Avenue, N.W. (the "Site"). The Site consists of Lot 807 in Square 8 and is currently zoned SP-2. The Application does not request any change in zoning for the Site. At its June 9, 2003, meeting, the Zoning Commission set this case for hearing.

2. Notice was originally given for a public hearing to be held on November 24, 2003. By letter dated November 3, 2003, the Applicant requested that the hearing be postponed until January 29, 2004. The Commission granted that request and proper notice was given again.

3. At the beginning of the hearing on January 29, 2004, Watergate East, Inc. ("East"), the owner of property abutting the Site and lessor to BRE of certain underground space, described and discussed further herein, requested that the Commission postpone the hearing. East, which is a residential cooperative, advised that its members had participated in a vote to determine East's position regarding the Application and the sale of certain property, that the outcome of the vote was disputed, and that litigation had been filed in the Chancery Court of Delaware to seek the Court's ruling on how the outcome of the vote should be construed. The representatives of East indicated that East could not take a position until the litigation was resolved. The Commission determined to postpone the hearing until March 1, 2004, to await the outcome of the Court's ruling on the matter.

4. The Zoning Commission thereafter held public hearings on March 1 and March 4, 2004.

5. The parties to the case were the Applicant; Advisory Neighborhood Commission ("ANC") 2A, the ANC within which the Site is located; Watergate West, Inc. ("West"), the owner of the adjoining apartment building to the west, which opposed the Application; the Committee of Concerned Owners of Watergate East ("COCO"), which was represented by William B. Wolf, Jr. and which supported the Application; and the Watergate East Committee Against Hotel Conversion to Co-op Apartments, ("Committee Against"), which was represented by Jack H. Olender and which opposed the Application.

6. East applied for party status, but when the hearing commenced on March 1, 2004, East was unable to declare whether it was in support of or opposed to the Application. The Chancellor of the Delaware Court ruled on February 25, 2004, that East was required to conduct a new vote of its members to determine its position regarding the Application. That vote had not occurred by the time of the hearing. Noting that both supporting and opposing positions were represented by COCO and the Committee Against, respectively – the committees of residents which had been admitted as parties -- the Commission denied East's request for party status.

7. The Commission also received requests for party status from Audrey and William B. Wolf, Jr., and Jill and Frederic W. Schwartz, Jr., both in support of the Application. Mr. and Mrs. Wolf are residents of East and Mr. and Mrs. Schwartz are residents of West. Both requested to be admitted as individual parties, separate from any of the entities that had applied for party status. The Commission found that neither couple demonstrated that their interests were likely to be more significantly, distinctively, or uniquely affected than those of other persons in the general public, especially as compared to other unit owners in the apartment buildings in the Watergate project. The Commission also noted that COCO, as a party in support, would essentially present the positions espoused by the two couples.

8. At its May 10, 2004, meeting, the Zoning Commission took proposed action by a vote of 3-1-1 to approve with conditions the Application and plans presented at the public hearings.

9. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated June 3, 2004, found that the proposed PUD would not adversely affect the identified federal interests and is not inconsistent with the Comprehensive Plan for the National Capital.

10. The Zoning Commission took final action to approve the Application on June 14, 2004.

The Site and the Area

11. The Site is situated in Ward 2 at 2650 Virginia Avenue, N.W. and consists of Lot 807 in Square 8. The Site is located southwest of the 2600 Virginia Avenue office building. The Property has no street frontage on Virginia Avenue but has access from Virginia Avenue by means of a driveway that runs between the 2600 office building and the Watergate West apartment building at 2700 Virginia Avenue. The Site faces the Rock Creek and Potomac Parkway but has no access from the Parkway. The site contains approximately 37,897 square feet of land area and is developed with a 250-room hotel consisting of three below-grade levels and fourteen stories above grade.

12. The Site is part of the Watergate complex, one of the first PUDs approved after the adoption of the PUD regulations in 1958. The Watergate complex is bounded by Virginia Avenue on the northeast, the Rock Creek and Potomac Parkway on the west, New Hampshire Avenue on the southeast, and F Street on the south. The overall Watergate complex includes three apartment buildings, two office buildings, a hotel, and interior retail spaces.

13. The Watergate complex is situated in the Foggy Bottom neighborhood, in the northwest quadrant of the city. The area is characterized by a mixture of land uses, predominantly in high-rise buildings, including apartment houses, a dormitory for the George Washington University, office buildings, two gasoline service stations, and the Kennedy Center.

14. The buildings that surround the Site are all part of the Watergate complex. To the northwest, east, and southeast are the three existing apartment buildings. To the northeast is one of the two office buildings. To the west and south are the Rock Creek Parkway and the Potomac River.

15. The remainder of the subject square includes only one small parcel, occupied by a gasoline service station at the corner of Virginia Avenue and Rock Creek Parkway. Immediately across Virginia Avenue to the northeast is a high-rise dormitory occupied by

students of the George Washington University ("GW") and another gasoline service station at the corner of Virginia Avenue and 27th Street. To the southwest, across F Street, is the Kennedy Center for the Performing Arts. To the southeast across New Hampshire Avenue, is the chancery of the Kingdom of Saudi Arabia. Behind the GW dormitory and the chancery are the ramps of the freeway connecting the Whitehurst Freeway and Interstate 66 ("I-66"). Further to the southwest across the freeway is Columbia Plaza, another high-rise mixed-use complex of apartments and offices.

16. The Generalized Land Use Map of the Comprehensive Plan designates the Site in the mixed-use high-density residential, medium-density commercial land use category.

17. The Site is not presently a designated historic landmark nor is it within a historic district. During the course of the proceedings on this case, The Committee to Preserve the Watergate Heritage, Inc., filed an application with the Historic Preservation Review Board to have the entire Watergate complex designated as a historic landmark. No action had been taken on that request by the time the Application was decided by the Zoning Commission.

Zoning and Zoning History

18. The Site is currently zoned SP-2. The SP-2 District permits an apartment house as a matter-of-right; offices and hotels now normally require approval of the Board of Zoning Adjustment as a special exception. The SP-2 District permits a maximum height of ninety (90) feet, with no limit on the number of stories, and a maximum density of 6.0 FAR, no more than 3.5 FAR of which may be used for other than residential purposes. Under the PUD guidelines for the SP-2 District, the maximum height of the project may be ninety (90) feet with a maximum density of 6.5 FAR, no more than 4.5 FAR of which may be devoted to other than residential purposes. Parking for apartments is required at a rate of one space for each four dwelling units.

19. There is no change in zoning requested for the Site.

20. The area southwest of Virginia Avenue is zoned SP-2. The area on the northeast side of Virginia Avenue is zoned R-5-E, with the area northeast of the freeway ramps zoned FB/R-3. The Kennedy Center and the Rock Creek Parkway are Federal property and are not zoned.

21. The original PUD for the Watergate complex was first approved in 1962. The original plan contained a mix of uses and an overall site plan featuring the curvilinear design that is emblematic of the Watergate. The project was divided into four Stages:

- Stage I was the apartment house now known as Watergate East at 2500 Virginia Avenue, containing 301 apartment units and also including approximately 50,000 square feet of retail and service commercial uses above and below ground;

- Stage II was the office building and the subject hotel, at 2600 and 2650 Virginia Avenue, respectively, to also include approximately 25,000 square feet of additional retail and service commercial uses;

- Stage III was the apartment house now known as Watergate West at 2700 Virginia Avenue, containing 143 apartment units; and

- Stage IV was to be an apartment house located along the New Hampshire Avenue and F Street side of the property and was to contain approximately 850 apartments.

22. The total development was to contain approximately 1,600 dwelling units including 1,300 apartments and 300 hotel rooms, 185,000 square feet of office space, 80,000 square feet of retail and service uses, and 1,250 parking spaces. The total density for the entire site was limited to 4.5 FAR, or approximately 1,887,000 square feet of gross floor area.

23. The BZA approved the construction of the project in a series of cases for further processing.

24. The PUD was amended by the Commission in 1968 to change the site plan and uses proposed for Building 1 (Stage IV), to allow up to 260,600 square feet of SP office uses with 325 dwelling units and 24,000 square feet of retail and service commercial uses (Case No. 68-58, order dated December 19, 1968).

25. The PUD was amended again in 1974 to allow general office use in Building 1 (Stage IV) at 600 New Hampshire Avenue (Order No. 100, Case No. 72-23, November 15, 1974) and in 1976 to allow general office use in the Stage II office building at 2600 Virginia Avenue (Order No. 125, Case No. 75-3, February 12, 1976).

26. The PUD was amended again in 1989 to allow for a 2,000-square-foot expansion of the health club in the Watergate Hotel on the B-3 level (Order No. 631, Case No. 89-6M, September 11, 1989). In that approval, the Commission summarized the totality of the project as then consisting of "over 500,000 square feet of office space, a 237-room hotel, 644 apartment units, underground parking, the health club, and a significant amount of retail space. There are 1,240 parking spaces located in a 3-level common garage which serves the entire complex."

The PUD Modification

27. The proposed modification to the PUD is to allow the option to convert the existing 250-room hotel, currently operating as the Watergate Hotel, to an apartment house of 133 dwelling units. The proposed new apartment building would be a cooperative, the same form of ownership as the three existing apartment buildings in the Watergate complex.

the Watergate complex. The curvilinear nature of the design remains a distinctive feature, not often duplicated in Washington architecture;

c. The building will continue to include the health club and a restaurant on the lower levels. These are uses of special value to the existing residents of the Watergate complex; and

d. By letter dated March 4, 2004, as supplemented by material in the Applicant's post-hearing submission, in consultation with the Office of Planning, the Applicant agreed to provide 3,000 square feet of affordable housing in the District of Columbia, by contributing $250,000 to an affordable housing provider to renovate existing space not now occupied.

Office of Planning Report

38. By report dated January 19, 2004, and by testimony at the public hearing held on March 1, 2004, the Office of Planning ("OP") provided its comments to the Commission on the proposed PUD modification. In its written report, OP advised that it was not able to provide a recommendation to the Zoning Commission, because the Applicant was not able to provide assurance that it had obtained what OP considered to be necessary approvals from the owners within the Watergate complex. OP further stated that, if these approvals are provided, OP would have no objection to the proposed modification to the PUD. As will be discussed later, the Commission has concluded that the concurrence of the other owners is not required for it to consider and approve this modification. The Commission therefore construes OP's position to be in support of the Application.

39. OP noted that the Applicant had not demonstrated that that it met all of the specific requirements of the Zoning Regulations for a PUD in the SP-2 District, particularly including rooftop enclosures, residential recreation space, lot occupancy, and parking. In a supplemental submission made on February 18, 2004, and in the report and testimony of the Applicant's land planner, the Applicant addressed the specific compliance issues identified by OP; for example, the requirements relating to residential recreation space (§ 533.4), lot occupancy (§ 532), and parking (§ 2101.1). Except for the roof structures (addressed in Findings No. 33 – 35 of this Order), the proposed PUD modification meets the technical requirements of the Zoning Regulations.

40. OP noted that the proposed modification met the specific applicable criteria of Chapter 24 of the Zoning Regulations. OP found that the proposal would have limited, if any, negative impacts on the surrounding area or on the operation of the city as a whole. OP found that the PUD modification would not be inconsistent with the Generalized Land Use Map or with Comprehensive Plan land use or housing objectives. OP found that the proposed modification would not lessen any of the benefits afforded by the original PUD and would provide additional housing.

District Department of Transportation Report

41. In its report dated February 24, 2004, the District Department of Transportation ("DDOT") reviewed the impact of the proposed modification. DDOT concluded that the proposed conversion of the hotel to apartments will generate fewer automobile trips and will have a positive impact in terms of capacity and level of service in the area road network. DDOT also concluded that the proposed level of parking supply would be adequate to meet the parking demand of this project with little or no spillover into surrounding areas.

ANC 2A Report

42. By resolution dated January 27, 2004, Advisory Neighborhood Commission ("ANC") 2A voted to support the Application for the following reasons:

a. The conversion would mostly involve interior renovations to the building to change the hotel rooms and facilities to apartment units;

b. The building would continue to contain a health club available for use by all residents of the Watergate and a restaurant on the B-1 level of approximately 3,000 square feet, accommodating approximately 120 seats;

c. The conversion would involve no substantial change to the exterior appearance of the building, involving some small rooftop additions and six carports to be added to the surface at the rear;

d. The Commission of Fine Arts has granted conceptual approval to the exterior alterations;

e. The Applicant agreed that the new apartment building would be offered for sale as a cooperative, the same form of ownership as the units in the three existing apartment buildings in the project;

f. A majority of the East cooperative members voted to sell to Monument the space that the current owner now rents from East and to support the Application;

g. Watergate South, Inc. supports this application;

h. The ANC has long desired an increase in the number of permanent residents within the boundaries of the ANC, and the proposed PUD modification would eliminate 250 transient hotel units in favor of 133 apartment units, which would accommodate several hundred permanent residents;

i. The change from hotel to apartment house use would likely result in less traffic generated from the building;

j. The Comprehensive Plan Generalized Land Use Map includes the subject property in the mixed-use high-density residential, medium-density commercial category, and the proposed change to apartment house use would be not inconsistent with that designation; and

k. The property is zoned SP-2, which would permit an apartment houses as a matter-of-right but for the original approval of the PUD.

43. The Zoning Commission afforded the views of the ANC 2A the "great weight" to which they are entitled.

Parties, Persons, and Letters in Support

44. The COCO, represented by William B. Wolf, Jr., supported the Application.

45. The Foggy Bottom Association, through the testimony of Barbara Spillinger, supported the Application.

46. Numerous individual residents from the Watergate cooperatives and from elsewhere in the area testified and wrote letters in support of the Application.

47. Watergate South, Inc., the third of the Watergate cooperatives, by letter dated January 27, 2004, supported the Application.

48. Subsequent to the ruling of the Delaware Court, a second meeting was convened of the members of the East cooperative on April 12, 2004. At that meeting, a majority of the members of East voted to sell to Monument the below-grade space currently leased to the hotel and voted to support the Application.

49. The bases for the support of the Application were generally that:

a. The addition of permanent residents, in place of transient hotel guests, would be good for the project and good for the city;

b. The sale of the below-grade space in East to the Applicant would be beneficial economically to East;

c. The Applicant has agreed to set up the new apartment building as a cooperative, the same form of ownership as the existing apartment buildings; and

d. The project would continue to include a restaurant and the health club, two uses that are highly valued by Watergate residents.

Parties, Persons, and Letters in Opposition

50. West and the Committee Against, parties in opposition, consolidated their presentation for testimony at the hearing.

51. Numerous individual residents from the Watergate coops and from elsewhere in the area testified and wrote letters in opposition to the Application.

52. The bases for the opposition to the Application were generally that:

    a. The project is a mixed-use project that has always had a hotel and the hotel use should be continued;

    b. The hotel is an amenity to the project and to the residents;

    c. The Comprehensive Plan calls for the retention of existing hotels;

    d. The proposed apartment house would generate more traffic than the existing hotel;

    e. The proposed apartment house would not be as economically advantageous to the District as suggested by the Applicant;

    f. The Applicant had not guaranteed that the health club and the restaurant would be continued;

    g. The Applicant had not demonstrated that the hotel was not economically viable and therefore there was no basis to change the use to an apartment house; and

    h. The Applicant was not registered to do business in the District of Columbia.

Consistency with the Comprehensive Plan

53. Through its land planning expert, the Applicant argued that the project is not inconsistent with the Comprehensive Plan. The Applicant presented the following points:

    a. The proposed development is consistent with the Generalized Land Use Map, which designates the PUD Site for high-density residential and medium-density commercial uses.

    b. The Project is consistent with the Comprehensive Plan's major themes as follows:

        1) Stabilizing and Improving the District's Neighborhoods: The conversion of a hotel into a multi-family residential building will provide an increased sense of community in the Foggy Bottom neighborhood. It will provide additional

housing opportunities in an area immediately outside of the Central Employment Area.

2) Reaffirming and Strengthening District's Role as an Economic Hub: The Comprehensive Plan encourages making maximum use of the District's location at the center of the region's radial Metrorail and commuter rail systems. The Project takes advantage of this asset by its proximity to the Foggy Bottom Metrorail Station.

c. According to the Housing Element of the Comprehensive Plan, housing in the District is viewed as a key part of a total urban living system that includes access to transportation and shopping centers, the availability of employment and training for suitable employment, neighborhood schools, libraries, recreational facilities, playgrounds, and other public amenities. The subject property supports the housing goals of the Comprehensive Plan and furthers the total urban living system of the District through its proximity to the Foggy Bottom Metrorail Station and its provision of multi-family residential units and on-site retail and service uses.

d. A basic philosophy of the District's Transportation Element is to provide for the efficient movement of people and goods within the District and its metropolitan area. The policies established in support of the general transportation objectives include supporting land use arrangements that simplify and economize transportation services. The location of the project in proximity to the Foggy Bottom Metrorail Station furthers this goal, as does the mixed-use nature of the development. The project also supports the District's goal of adequate parking through its provision of 146 parking spaces for 133 residential units, a ratio that exceeds the minimum requirement for parking in an SP-2 District, where only thirty-seven spaces would be required for 146 units. The parking is provided in a three-level, below-ground garage.

e. The Transportation Element of the Comprehensive Plan also states that reverse commute options that will provide District residents with access to the regional job market should be provided. The proximity of the subject property to I-66 and the Theodore Roosevelt Memorial Bridge, in addition to the Foggy Bottom Metrorail Station, will provide District residents with easy access to suburban job markets.

f. The Urban Design Element states that it is the District's goal to "promote the protection, enhancement and enjoyment of the natural environs and to promote a built environment that serves as a complement to the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient." As the project involves a use conversion of an existing hotel, the building will maintain its consistency with the surrounding area in terms of materials, height, scale, and massing. The project's

massing and scale are already sensitive to the established patterns of development in the area.

g. The Land Use Element encourages a substantial amount of new housing primarily in housing opportunity areas and near Metrorail Stations in order for the District to perform its role as the region's urban center providing the greatest density of jobs and housing. The Site furthers this goal due to the subject site's proximity to the Foggy Bottom Metrorail Station.

h. The Project fulfills and furthers the specific objectives for this area, as set forth in the Comprehensive Plan for Ward 2, as follows:

1) The Ward 2 Economic Development Element seeks to enhance the image of the ward as a place to do business and to reside. The proposed development creates additional residential opportunities in the ward while increasing income and property tax revenues to the District.

2) The Ward 2 Housing Element encourages the provision of new housing to meet the needs of present and future District residents at locations consistent with the District land-use policies and objectives. The proposed development furthers this goal through the development of high-quality housing in a mixed-use area that is in close proximity to Metrorail.

3) The Ward 2 Housing Element further states that the District government shall improve neighborhood-level commercial services throughout the ward while protecting residential neighborhoods from disruptive uses. The proposed development creates both additional housing that will enhance the residential neighborhood and neighborhood-level retail and service uses that will support the residents.

4) Ward 2 is located at the center of the District and at the focal point of the Metrorail system, bus lines, and the city's freeway and arterial street system. Although its location provides great benefits to the residents and employees of Ward 2, it also creates some adverse impacts on quality of life. Parking within the ward is identified as a major problem due to evening visitors, student parking, and the lack of parking provisions for many residential dwellings. This element of the Comprehensive Plan encourages strict adherence to the current parking requirements of the zoning regulations. The proposed development will include 146 parking spaces for 133 residential units, providing adequate parking for the residents of the apartment building.

5) Primary objectives of the Ward 2 Residential Land Use Element include the conservation and enhancement of existing residential neighborhoods and the creation of new residential neighborhoods. Specifically, the Foggy Bottom and

West End residential neighborhoods are to be maintained and enhanced. The project supports the Residential Land Use Element of the Comprehensive Plan by creating the opportunity for a new residential use that will significantly enhance the character of the neighborhood.

54. West and the Committee Against argued that the proposed elimination of the hotel is contrary to sections of the Ward 2 Plan Element that encourage "continued improvement of existing hotels." The opposition further argued that the PUD is not in a housing priority area and that the loss of hotel jobs is contrary to the economic goals of the Plan.

55. OP testified that the project would not be inconsistent with the Generalized Land Use Map or with Comprehensive Plan land use or housing objectives.

56. The Zoning Commission finds that focusing on the particular sections of the Ward 2 Element of the Plan concerning existing hotels, without reference to other parts of the Plan, does not yield a complete picture of the goals, objectives, and policies of the Plan. While the "continued improvement of existing hotels" is a Ward 2 Plan objective, the Land Use Element of the Plan stresses the promotion of housing. The District Elements of the Comprehensive Plan are set forth in Title 10 of the D.C. Municipal Regulations, and include General Provisions, city-wide elements related to Economic Development, Housing, Environmental Protection, Transportation, Public Facilities, Urban Design, Preservation and Historic Features, Downtown, Human Services, and Land Use, as well as eight ward plans.

57. The General Provisions Element of the Plan instructs how to interpret the District elements:

a. "The primary dynamic of the District elements of the Plan is the overlapping of its elements' goals. This overlapping is intentional." (§112.1)

b. "District elements of the Plan should be studied and executed in concert with each other and should be interpreted broadly." (§111.(a))

c. "The interpretation and implementation of any element should necessarily rely upon, and be respectful of, the objectives and policies of other elements." (§112.1(b))

d. "An element may be tempered, even defined, by one (1) or more of the other elements. This may occur within one (1) element and between elements. Since the Land Use element integrates the policies and objectives of all other District elements, it should be given greater weight than the other elements." (§112.1(c))

e. "The interpretation of the District elements of the Plan should also be guided by the major themes set forth in §101.1, which establish the overall priorities of the District elements of the Plan." (§112.2)

58. Accordingly, the Commission finds that the Plan must be read as a whole, and reliance on a narrow, isolated portion of the Plan to assess compliance is inconsistent with the above-cited provisions.

59. The Commission finds that the broader reading of the entire Comprehensive Plan, both city-wide and Ward 2 Element provisions, places the stronger emphasis on housing. The Housing Element is replete with references to the production of new housing. The Generalized Land Use Map of the Land Use Element designates the site in the mixed-use high-density residential and medium-density commercial category. While a broad range of uses could fit within that designation, including commercial, hotel, and residential, the Commission finds that the density categories (high residential vs. medium commercial) suggest a preference for residential and that changing the hotel to an apartment house would not be inconsistent with this land use designation.

60. The Commission further finds that the overall thrust of the hotel provisions of the Ward 2 Element is to locate hotels at appropriate locations, particularly citing locations near the new Convention Center north of Mount Vernon Square. While §1333.1(a)(1) speaks to encouraging continued improvement of existing hotels, the Commission finds that, considered in the overall context of the Plan, that section cannot be read to prevent the conversion of an existing hotel to another favored use, such as residential.

61. The Commission therefore finds that the proposed PUD modification is not inconsistent with the Comprehensive Plan.

Economic Benefits of the Modification

62. The Applicant submitted a written study performed by Basile Baumann Prost & Associates, Inc. ("BBP"). James Prost presented testimony at the hearing, and BBP submitted additional material as part of the Applicant's post-hearing submission (in total, the "economic analysis") concerning the fiscal and economic benefits that would accrue to the District of Columbia if the Application was approved. The economic analysis compared the economic and fiscal benefits that are derived from the existing hotel operation to those benefits that would result from an apartment house on the site.

63. The economic analysis determined that the existing hotel has 228 on-site jobs and 122 indirect jobs generated by the economic activity that occurs on-site, for a total of 350 jobs. The hotel's employment generates an aggregate annual payroll of more than $10.8 million and the wages and salaries of employees generate $5.3 million in consumer expenditures within the District. The economic analysis further determined that the existing hotel generates $3.2 million annually in tax revenue.

64. The economic analysis estimated that the renovation of the building necessary to convert it to an apartment house would create 56 direct on-site jobs and 52 indirect jobs and would generate approximately $460,000 in tax revenue to the District.

65. The economic analysis further estimated that, once completed and fully occupied, the apartment house would create 41 direct on-site jobs and 412 indirect jobs as a result of expenditures by residents in the District, for a total of 453 jobs. The apartment house was estimated to generate $4.1 million in annual tax revenue, including about half of that total in income taxes paid by residents.

66. On an ongoing basis, after the one-time benefits during the construction period, the economic analysis concluded that converting the hotel into an apartment house would yield a net increase of 103 jobs overall, with most of the new jobs created as a product of residents' expenditures within the District. There would be an estimated increase of $26 million in consumer expenditures. Annual tax revenue to the District would increase by more than $900,000.

67. The economic analysis concluded that the conversion of the hotel to an apartment house will meet District economic development and housing objectives, and that the conversion will contribute substantively to the tax revenues and the economy of the District.

68. The conclusions of the economic analysis were consistent with those of the Rivlin Report and other economic studies that taxpaying residential development is highly beneficial to the District and offers a way to increase the overall fiscal stability and tax base of the District.

69. West and the Committee Against argued that the economic analysis overstated the benefits that would result from the apartment house conversion by using unrealistic assumptions about where residents would spend money, what percentage of the residents would pay income taxes to the District, the percentage of future hotel guests who would choose to stay in other hotels in the District, and the ability of present hotel employees to find new jobs in the District. The opponents presented no substantive evidence or expert testimony to contradict the findings of the economic analysis.

70. The Zoning Commission finds that the economic and fiscal benefit to the District from the conversion of the hotel to quality residential use stems from a variety of factors: the significant capital investment and hence construction period benefits; the transfer of the on-site hotel demand, and hence economic impact, to other, better-located hotels in the District; and, primarily from the new permanent households on site, who will live, spend, work, and pay taxes to the District.

71. The Zoning Commission finds that residents who occupy high value units have significant positive economic and fiscal impacts for the city. These residents have high incomes that generate significant local income tax and their units generate high property

taxes. These residents make significant local purchases that generate local sales taxes and in turn create demand for retail and other service, and retail and service jobs. These expenditures and jobs in turn create economic spin-offs or multiplier impacts that create an entire cycle of economic benefits. These residents, at the same time, generate relatively minimal new service costs to the District in terms of such high cost public services as education and human services.

72. The Zoning Commission concurs in the importance of bringing new high-income households into the District to grow the District's tax base. This means increasing the income, spending, and wealth of the existing population and enlarging that population. The Commission finds that virtually all economic and development reports on the District note that upper income households with no children contribute significantly and positively to the District's overall economic health.

73. The Zoning Commission finds that the economic analysis was conducted in accordance with standard methodology based upon and accepted and used by the Federal and District governments. The Commission credits the results of the economic analysis and finds no alternative substantive information in the record. The Commission further finds that the results of the analysis are so strongly positive for the city that, even if some of the background assumptions for the economic analysis were changed and the results were further discounted, the fiscal and economic benefits for the city would still be better than what the current use provides.

74. With respect to the potential loss of the existing hotel jobs, the Zoning Commission finds that even if the Commission disapproves this Application, there is no guarantee that the existing hotel will remain in operation. The Commission further finds that the hotel has lost its competitive position in the hotel market to newer, better-located hotels.

75. The Zoning Commission finds that denial of the Application will not cause the hotel's position to improve and will not guarantee the retention of existing jobs.

76. The Commission finds that the hotel market in the District of Columbia is comparatively strong and that there is a substantial likelihood that the existing hotel demand will shift to other hotels nearby and elsewhere in the District of Columbia, causing those hotels to seek additional employees to service that demand.

77. The Commission finds that the total number of direct and indirect jobs, including jobs located in the District and/or jobs held by District residents, generated by the proposed apartment house use, will be more than the number generated by the hotel, even though the type and location of those jobs will be different.

Ability of the Applicant to Carry-Out the Modification

78. The Committee Against argued that the Applicant was not registered to do business in the District of Columbia and that it was therefore unable to carry out the plan for which it sought approval. The Committee Against likewise argued that, because East had not approved the sale to Monument, the Applicant could not proceed with the development as proposed.

79. The Applicant responded that Monument did not have to be registered to do business in the District just to own real or personal property or to maintain bank accounts, that Monument intended to assign the contract to purchase the property to an affiliated LLC that would actually undertake the development, that such a procedure was typical of real estate development practices, and that the new entity would be registered in the District at such time that it undertakes any activities which would require it to be registered. Notwithstanding its legal position that Monument did not have to be registered in the District, as part of its post-hearing submission, the Applicant advised that Monument was registered with the District of Columbia and submitted a Certificate in Good Standing, dated March 30, 2004, for Monument from the Department of Consumer and Regulatory Affairs.

80. With respect to the ability to proceed if it does not own the below-grade space, the Applicant argued that it has the right under BRE's lease with East to use that space for an additional sixty-one years. The Applicant is prepared to go forward with the development if the space can only be leased for that period, believing that is economically feasible and prudent to do so. However, the vote of East on April 12, 2004, to agree to the sale and support the proposed modification, will allow the Applicant to conclude the purchase from East and eliminate any concern about the ability to go forward.

81. The Zoning Commission finds that the questions about the Applicant's ability to proceed with the project are outside the Commission's purview. Whether a corporation needs to be registered is not a land use matter. Other agencies of the District can determine whether registration is required and take action if a violation is found. In any event, this issue is moot because Monument appears to be in good standing in the District of Columbia.

82. With respect to the leased parking space, the Commission need not determine the rights and obligations under the lease between East and the Applicant. The Applicant has proffered that it will provide sufficient parking for the apartment building and such parking is a condition of approval of this Application. The Commission notes that East's agreement to sell the below-grade space to the Applicant appears to render this question moot in any event.

Compliance with PUD and Zoning Standards

83. West and the Committee Against argued that the hotel was originally considered as an amenity for the PUD and that eliminating the hotel would undercut the basis for approval of the original PUD. The opponents further argued that the original PUD envisioned a complementary, integrated mix of uses and that removing the hotel from that mix would undermine the integrity of the whole project. The opponents further argued that the Applicant had not proven that keeping the hotel would constitute an economic hardship for its owners.

84. The Applicant observed that, at the time the PUD was approved, the portion of the Zoning Regulations covering PUDs were different from the current Regulations, which were adopted in 1995. The Regulations in 1962 did not contain a balancing test between the development incentives or the degree of flexibility requested by an applicant and the benefits or amenities offered as part of an application. The concept of amenities was not added to the Regulations until 1979 and the balancing of amenities and benefits was not added to the Regulations until 1995. Consequently, the Applicant argued that a hotel could not have been offered as an amenity to satisfy the Regulations in 1962, because amenities were not part of the Regulations. While the mixed-use character of the PUD was integral to its approval, the loss of the hotel use will not change the project's mixed-use character. Because of the continued office building, retail, restaurant, and health club uses, the proposed modification will not result in a project that is purely residential.

85. In its original statement, in its pre-hearing statement, in testimony at the hearing, and its in post-hearing submission, the Applicant further set forth its arguments in support of the proposed modification and demonstrated how the project met the requirements of the Regulations.

86. The Applicant noted that the project as first approved had a much larger residential component than resulted from the project as modified and built. Allowing an increase of 133 apartments would bring the total number of units closer to but still well below the originally contemplated number of residential units.

87. OP reported that the project met the standards of the Regulations except for roof structures and parking for the proposed restaurant and that the proposed modification was acceptable in those two areas as well.

88. The Zoning Commission finds that a hotel was an important component of the project as originally conceived. But the Commission also finds that allowing the hotel to be converted to apartments would strengthen the residential component of the mix of uses. The Commission finds that PUDs are not static. They are dynamic elements, the composition of which is often adjusted to reflect changes in markets, economics, and project and community needs. In the Foggy Bottom community, with the decrease in the number of permanent apartment units and the increase in the number of hotel rooms at

other locations, the Commission finds that adjusting the mix to increase the number of apartments is an appropriate action in the current climate. The Regulations allow for modification of a PUD precisely because of the need for flexibility. The subject PUD has been modified previously in response to changed conditions.

89. The Zoning Commission finds that the hotel was not an amenity to the overall project, as amenities are now defined and considered in Chapter 24 of the Zoning Regulations. While the hotel may have been discussed in marketing and newspaper accounts as an amenity, that term was not incorporated into the Regulations until much later. Moreover, under current Zoning Regulations, the Watergate Hotel would have required special exception approval, whereas the proposed apartment house use can be commenced as a matter of right. It is counterintuitive to suggest that the preservation of a use that now requires a special except should be favored over the establishment of a use that is permitted by right.

90. The Zoning Commission further finds that the Applicant is not required to prove that keeping the hotel would cause a hardship. This application is not for a variance and the Applicant is not required to establish a practical difficulty or hardship. The Applicant is seeking a modification to an approved planned unit development. Chapter 24 requires that such modifications "meet the requirements for and be processed as a second stage application." 11 DCMR § 2409.9. Nowhere does Chapter 24 mandate an inquiry into an applicant's motivation for undertaking a particular development. Here, the Applicant has proposed an appropriate alternative use that is a "high quality development[] that provide[s] public benefits", 11 DCMR 4200.1. The Applicant has to meet its burden of complying with the standards of Chapter 24, and the Commission finds that the Applicant has met that burden.

91. The Zoning Commission further finds that this Applicant is not required to secure the consent of all property owners for modification of the PUD. The Zoning Regulations do not require the consent of owners and, in practice, the Commission has not required unanimous consent of the owners of property within a PUD before approving a modification. In fact, the Zoning Commission may rezone property over the objection of a property owner, so long as the owner is given an opportunity to be heard. Nothing in this order will result in a zoning change affecting the other owners' properties[2]. Nevertheless, the other owners have been afforded a full opportunity to make their views known, all of which have been discussed at length in this Order. Nothing more is required.

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[1] Approval of the original PUD did not require a covenant binding all owners and successors-in-interest to the conditions of approval. Thus, the project owners never recorded such a covenant in the land records. The Commission does not decide here whether it would require the consent of all co-owners if such a covenant were in place. However, the covenant that will be required as a condition of this Order will only required the signature of the owners of the site.

92. The Commission finds that the Applicant met its burden of proof under the current regulations. The relief that the Applicant seeks relative to the underlying SP-2 District is minor. The proposed apartment house use is normally permitted as a matter-of-right and therefore is a favored use. The existing hotel use is now normally a special exception, and therefore is less favored. The deviations requested by the Applicant are minor, related to the number and height of roof structures. The benefits and amenities proposed by the Applicant, as set forth in Finding No. 37, above, are more than adequate to balance the approval requested.

Traffic Impact

93. Through the report and testimony of its expert traffic consultant, Wells & Associates, the Applicant demonstrated that the proposed change in use would not have an adverse effect on traffic. The Applicant's traffic consultant concluded that the proposed apartment house would generate fewer vehicle trips during the morning and evening peak hours than the existing hotel. The proposed residential use would be served by the same access and circulation systems as the existing hotel. The proposed apartment building would have more than one parking space for each apartment unit, which exceeds the requirements of the Zoning Regulations of one space for every four units. The Applicant's traffic consultant concluded that the public street network will adequately accommodate the proposed residential use and that the trips generated by the proposed use would have an insignificant effect on the traffic volume already present on Virginia Avenue.

94. West and the Committee Against presented their own traffic expert, Joe Mehra. Mr. Mehra argued that the Applicant's traffic analysis was flawed, because it relied on projections of traffic for the Hotel and did not count the actual number of trips at the Hotel driveways. Mr. Mehra's observations of traffic indicated that the hotel actually generated less traffic than was estimated and that the proposed use would therefore generate relatively more traffic than the existing use.

95. DDOT concluded that the proposed conversion of the hotel to apartments will generate fewer automobile trips and will have a positive impact in terms of capacity and level of service in the area road network. DDOT also concluded that the proposed level of parking supply will be adequate to meet the parking demand of this project with little or no spillover into surrounding areas.

96. The Zoning Commission finds that the analysis performed by the Applicant's traffic expert, the conclusions of whom were confirmed by DDOT, is a credible and internally consistent analysis. The Commission is not persuaded by the testimony of the opponents' expert, who counted trip volumes at the existing hotel driveways. In so doing, Mr. Mehra did not count all of the trips that are generated by the existing hotel, excluding trips that end in parking garages, on street, or other than in the driveway areas. Further, Mr. Mehra used estimated values for the proposed apartment house and did not use actual numbers for the existing apartment buildings. The Commission further finds that Wells &

Associates' conclusion that the 133 proposed apartment units would generate fewer trips than the existing hotel is consistent with the building population of both uses. In total, the existing hotel is occupied by 377 guests and staff on an average day and the proposed apartments would be occupied by only 170 residents and staff on an average day.

97. Accordingly, the Commission finds that the impact on traffic would be lower with the proposed use than with the existing use. The Commission further finds that the number of trips generated would have no significant effect on traffic, given the existing traffic volumes present on Virginia Avenue.

The Health Club and the Restaurant

98. West, the Committee Against and other opponents argued that the conversion of the hotel would result in the loss or diminution of valuable community resources: the hotel itself, the restaurant, and the health club. Much of the opposition concern revolved around the Applicant's perceived failure to guarantee the future operation of the health club.

99. The Applicant's proposal identifies space on the B-1 level for a restaurant and on the B-3 level for the health club. The Applicant will construct the space for the restaurant, and in the case of the health club, will renovate, improve, and fit out the existing space. The future operation of those spaces will not be in the hands of the Applicant. The management, levels of service, and operation of those uses will be determined by the future owners of the new apartment house. The Applicant has provided a mechanism to include the residents of the current apartment houses in making the decisions about the future of those facilities, should the existing cooperatives want to be involved in those decisions.

100. The Zoning Commission finds that the Applicant has made appropriate arrangements to continue the two components of the existing hotel deemed most critical by most of those who testified, namely, the health club and the restaurant. The Commission will require by condition made a part of this Order that the Applicant provide the spaces for the two uses. Future control of the operation of the restaurant will be vested in the Watergate Council, which is comprised of the ownership interests of the apartment and office buildings. Future control of the operation of the health club will be vested in the membership of the club, which includes each of the cooperative share owners of the proposed apartment building and any other share owners of the three existing cooperatives who chose to join the club. As to the hotel, as set forth in Finding No. 87, changing the hotel to an apartment house is an appropriate reinforcement of the residential component of the Watergate complex. There are other existing hotels nearby in the Foggy Bottom/West End area that can accommodate demand for hotel rooms from Watergate residents.

Response to Issues and Concerns of ANC 2A

101. In its report, ANC 2A supported the Application based on the issues and concerns set forth in Finding No. 41. The Commission concurs with the findings and recommendations of the ANC. In particular, the Zoning Commission gives great credence to the ANC's desire to obtain more permanent residents. Replacing 250 transient hotel units with 133 apartment units will be another step to counter the loss of dwelling units, which has been an issue for the Foggy Bottom neighborhood for some time.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.

2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this Application as a modification to the approved PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. The Zoning Regulations do not require the consent of all owners within an approved PUD in order to modify that PUD.

3. The modification of this PUD project continues to carry out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The PUD is within the applicable height and bulk standards of the Zoning Regulations, and the change in use within the existing building will not cause any adverse effect on any nearby properties. Apartment use for this building is appropriate on this Site, which is located in a zone that otherwise permits multiple dwellings as a matter-of-right. Allowing the hotel to be converted to an apartment house will not upset the mix of uses in the overall PUD. The impact of the project on the surrounding area is not unacceptable. Accordingly, the Application should be approved.

5. The Application can be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development will be mitigated.

6. The Application does not seek significant development incentives or flexibility beyond what the Zoning Regulations ordinarily require. The amenities and benefits provided are a reasonable trade-off for the change in use, particularly given that the proposed development requests no development incentives from the existing underlying matter-of-right zoning other than minor zoning relief relating to the roof enclosures. The use, height, bulk, and design of the proposed development are appropriate for all sides and all contexts of the building.

7. Approval of the Application is appropriate, because the proposed development is consistent with the present character of the area.

8. Approval of this modification to the approved PUD is not inconsistent with the Comprehensive Plan, including the designation of the Site as mixed-use high-density residential and medium-density commercial.

9. The Commission is required under D.C. Code 2001 Ed. § 1-309.10(d) to give great weight to the affected ANC's recommendation. The Commission has done so and concurs with the ANC's position that the Application should be approved.

10. The approval of the Application will promote the orderly use and development of the Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

11. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

12. Ordinarily a covenant is not required as a condition to a PUD modification order. This is because a covenant usually has been recorded pursuant to the original PUD, which subjects the owners, or their successors, to abide by the conditions of all future amendments. However, no such covenant was required or recorded at the time of the original approval of this PUD. Chapter 24 mandates that all non-minor PUD modifications meet the requirements for and be processed as a second stage application, 11 DCMR § 2409.9. Subsection 2409.3 precludes the Zoning Administrator from approving a building permit authorized by a second stage order until a covenant is recorded in accordance with that subsection. Therefore, the Commission must require that such a covenant be recorded with respect to this modification. For the purposes of satisfying § 2409.3's requirements that the "owner or owners" sign the covenant, the Commission concludes that only the owner or owners of the site to which the modification applies must execute the instrument, since they are the only persons who will be bound by the covenant's declarations.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the Application for modification to an approved Planned Unit Development for property located at 2650 Virginia Avenue, N.W., in Square 8, Lot 807. This approval is subject to the following guidelines, conditions, and standards:

1. The Applicant may convert the existing building to an apartment house to be owned and operated as a cooperative.

2. The conversion shall be accomplished substantially in accordance with the plans and computations dated February 17, 2004, marked as Exhibit No. 55 in the record, as modified by the guidelines, conditions, and standards herein.

3. The apartment house shall contain a maximum of 133 units. The exterior and interior modifications to the existing building shall be those shown on the approved plans.

4. The Applicant shall designate approximately 3,000 square feet of space on the B-1 level for a restaurant, as shown on the plans. The nature of the operation of a restaurant in that space, including hours of operation, shall be determined by the cooperative association to be formed.

5. The Applicant shall include a health club on the B-3 level, as shown on the plans. The health club shall be outfitted initially with the equipment and in the manner shown in the Applicant's Post-hearing submission, marked as Exhibit No. 152 in the record. The operation of the health club in that space, including the hours of operation and the level of services offered, shall be determined by the cooperative association to be formed.

6. The apartment building shall contain at least 146 parking spaces, located as shown on the plans marked as Exhibit No. 55 in the record.

7. Prior to the issuance of a certificate of occupancy for the apartment building, the Applicant shall contribute $250,000 to Jubilee Housing to assist in providing 3,000 square feet of affordable housing at 1631 Euclid Street, N.W. In the event that Jubilee determines not to proceed with the renovation of that building, the Applicant may contribute the funds to Jubilee for another project or to another non-profit housing provider for the renovation of at least 3,000 square feet of affordable housing in the District of Columbia. If an alternate project receives the funds, the Applicant shall submit a written certification, including plans, to the Zoning Administrator, with a copy to the Zoning Commission, showing the area to be renovated and obligating the housing developer to reserve the units for affordable housing.

8. The Applicant shall have flexibility with the design of the PUD in the following areas:

a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;

b. To combine units to reduce the total number of units but make larger units as a result;

c. To vary the number and location of underground parking spaces, not to decrease below a minimum of one parking space for each dwelling unit;

d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;

e. To make minor modifications to the exterior in response to the final review by the Commission of Fine Arts and review by the Historic Preservation Review Board, if the building is designated a historic landmark; and

f. To make minor refinements to exterior details and dimensions, including cornices, railings, and trim, or any other changes to comply with the D.C. Building Code or that are otherwise necessary to obtain a final building permit.

9. The modification to the PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.

10. No building permit shall be issued for this Planned Unit Development until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners of the modification site and the District of Columbia, that is satisfactory to the Office of the Attorney General for the District of Columbia and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the owners or owners and all successors in title to construct on and use the property that is the subject of this modification, in accordance with this Order or amendment thereof by the Zoning Commission.

11. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the 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 that 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.

Vote of the Zoning Commission taken at is public meeting on May 10, 2004: 3-1-1 (Carol J. Mitten, John G. Parsons, and Kevin Hildebrand in favor; Anthony J. Hood opposed; Gregory Jeffries not voting, not having heard the case).

The Order was adopted by the Zoning Commission at its public meeting on June 14, 2004, by a vote of 3-1-1 (John G. Parsons, Carol J. Mitten, and Kevin Hildebrand in favor; Anthony J. Hood opposed; Gregory Jeffries not present, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on AUG - 6 2004.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Application No. 17022 of Edmund Burke School, pursuant to 11 DCMR § 3104, for a special exception to allow an addition to an existing private school and to increase the enrollment from 270 to 320 students and faculty/staff to 70, under § 206, in the R-2 and R-5-D Districts at premises 4101 Connecticut Avenue, N.W. and 2955 Upton Street N.W. (Square 2243, Lots 67 and 68).

HEARING DATES: July 15, 2003, October 14, 2003, and October 28, 2003
DECISION DATES: December 2, 2003 and August 3, 2004

DECISION AND ORDER

This application was submitted April 14, 2003 by the Edmund Burke School, the owner of the property that is the subject of the application. Following a public hearing, the Board voted 5-0-0 on December 2, 2003 to grant the application subject to conditions.

Procedural Matters

Application. The Edmund Burke School ("Burke School" or "Applicant") filed an application pursuant to 11 DCMR § 3104 for a special exception under 11 DCMR § 206 to construct a new school building next to its existing building and to expand the private school use to both buildings, with an increase in enrollment from 270 to 320 students and an increase in faculty/staff from 35 to 70, in the R-2 and R-5-D zones at 4101 Connecticut Avenue, N.W. and 2955 Upton Street, N.W. The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Public Hearing. By memoranda dated April 21, 2003, the Office of Zoning sent notice of the application to the Office of Planning; the Department of Transportation; the Councilmember for Ward 3; Advisory Neighborhood Commission ("ANC") 3F, the ANC for the area within which the subject property is located; and the single-member district ANC 3F07.

The Board originally scheduled a public hearing on the application for June 24, 2003. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on April 29, 2003 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 3F. Notice was also published in the D.C. Register (50 *D.C.R.* 3687). The hearing was postponed at the Applicant's request until July 15, 2003. Notice of the rescheduled hearing was sent by letter dated May 12, 2003 to the Applicant, the owners

of property within 200 feet, and ANC 3F, and was published in the D.C. Register (50 *D.C.R.* 4152).

Requests for Party Status. ANC 3F was automatically a party in this proceeding. The Board granted a request for party status in support of the application submitted by Neighbors Allied for the Reasonable Development of Schools ("NARDS"), a group of residents of 28th Place, Upton and Tilden Streets, and Connecticut Avenue in the vicinity of the subject property represented by Deirdre Karambelas. The Board granted timely requests for party status in opposition to the application by (1) Neighbors United for Livable Streets ("NULS"), a coalition of residents of Upton and Tilden Streets, N.W. in the vicinity of Burke School; (2) Sirius LLC ("Sirius"), the owner of a 37-unit apartment building located at 4107 Connecticut Avenue, N.W., abutting the site of the proposed expansion; (3) Linda Jay, a resident of Upton Street in a house immediately east of the existing Burke School building; and (4) 2950 Van Ness Tenants' Association and Van Ness South Tenants' Association, organizations representing residents of large apartment buildings (269 and 625 units, respectively) at 2950 and 3003 Van Ness Street, N.W. (collectively, "Van Ness Tenants"). The Board denied a request for party status in opposition submitted by Virginia Wilson Worthington, a resident of the 2800 block of Upton Street N.W.

Applicant's Case. The Applicant provided testimony and evidence from David Shapiro, Burke School's Head of School; Steve Pruitt, chairman of its Board of Trustees; William Gridley, a principal in Bowie Gridley Architects, recognized by the Board as an expert in architecture; Martin Wells of Wells & Associates, recognized by the Board as an expert in transportation and traffic engineering; and Officers Michael Boyd and Michael Auls of the District of Columbia Metropolitan Police Department.

Government Reports. By report dated July 8, 2003 and through testimony at the public hearing, the Office of Planning ("OP") recommended approval of the application subject to certain conditions pertaining generally to transportation, school management, sound levels, and student conduct. OP concluded that the Applicant's proposed new building – which would expand the school's occupiable space and provide a parking garage, a queuing ramp for student drop-offs and pick-ups, and a pedestrian bridge connection to the existing building – would allow the Applicant to make operational changes and implement new traffic and parking management plans that would lessen the current impacts of the private school use and accommodate the requested increases in number of students and employees without creating additional adverse impacts.

The Department of Transportation ("DDOT") noted that the Applicant's proposed expansion would add traffic to an already congested area, and that the number of institutional land uses in the vicinity of the subject property presented unique transportation challenges, but concluded that the Applicant demonstrated an ability to

reduce the traffic impacts of Burke School through the implementation of various transportation management programs. By report dated July 3, 2003 and through testimony at the public hearing, DDOT indicated its support for the proposed expansion "linked with successful implementation" of the Applicant's proposed expanded traffic management plan, which could reduce or contain traffic impacts from a limited expansion of student population. Based on field visits to the subject property, DDOT concluded that the Applicant's current traffic management plan has had a positive effect on traffic patterns in the immediate area of Burke School, and that the compliance rate, although less than 100 percent, was substantial enough to improve the traffic situation over pre-existing conditions. DDOT indicated its willingness to continue working with the Applicant to revise the traffic management plan, if necessary, in response to future changes in traffic conditions in the vicinity of the subject property.

DDOT's analysis of the requested special exception was undertaken in the context of a larger study commissioned by DDOT to examine existing and projected transportation conditions along relevant segments of Connecticut Avenue. The DDOT study of Connecticut Avenue traffic was completed in 2003.

ANC Report. At a duly noticed public meeting held July 1, 2003 with a quorum present, ANC 3F passed a resolution, by a vote of 5-0-1, recommending denial of the application. By a vote of 5-1-1, the ANC adopted a report, also dated July 1, 2003, that identified issues and concerns relating to the application; they were: (a) the Applicant's "lobbying campaign" and neighborhood advisory committee, which was unable to generate neighborhood consensus due to its "flawed composition"; (b) adverse conditions in the surrounding neighborhood associated with the existing Burke School operation pertaining to traffic, parking, and student conduct that would be exacerbated by the Applicant's proposed expansion; (c) the potential risk to neighboring buildings, and to subsurface water in the surrounding neighborhood, during construction of the proposed addition due to the need for excavation and blasting at the subject property; and (d) the incomplete nature of the application, which failed to request necessary variance relief with respect to loading requirements and to court and yard setback requirements affected by the Applicant's proposed pedestrian bridge.

The ANC concluded that approval of the proposed expansion of the Burke School would violate 11 DCMR § 206.2 primarily because of noise caused by students and air-conditioning equipment, traffic congestion, student misconduct, and construction issues. ANC 3F recommended denial of the application with instructions to Burke School that the caps on the number of students and faculty/staff previously adopted by the Board remain in effect.

Party in Support. The representative for Neighbors Allied for the Reasonable Development of Schools testified that Burke School has made a stronger, more consistent

effort to be a good neighbor in the community; for example, through implementing successful measures to reduce school-related traffic, providing information to residents of the neighborhood, and cleaning litter from Upton Street. According to NARDS, many persons in the community support or are neutral about the Applicant's proposed expansion.

Persons in Support. The Board received numerous letters and heard testimony from many persons interested in the application. Persons in support generally described the many attributes of Burke School, the success of its recent efforts to reduce the volume and improve the flow of school-related traffic, the suitability of the subject property as a location for a school, the desire to have the Applicant's proposed building on the site rather than a larger apartment building that would create additional traffic and parking demands without benefit of a traffic management plan, and the need for private schools and more school options in the District.

Parties in Opposition. Neighbors United for Livable Streets presented evidence and testimony from several witnesses, including expert testimony from Milton Shinberg, an architect, and from Joe Mehra, a traffic consultant. The traffic consultant did not perform an independent study of traffic in the vicinity of the subject property, but commented on the results of the Applicant's transportation study.

NULS's opposition to the application cited especially traffic and parking concerns; safety concerns related to the presence of students outdoors in the neighborhood near the subject property, particularly in the alley behind the existing school building; deficiencies in the Applicant's proposed school management plan and traffic management plan; the commercial or institutional appearance of the proposed new building; and the erosion of the residential fabric of the neighborhood caused by the expansion of an institutional use. NULS's traffic expert testified that the Applicant's plan to create a new curb cut on Connecticut Avenue, a major arterial, would affect the flow of traffic, especially northbound. NULS also contended that the driveway exit onto Upton Street, next to the public alley exit, would create points of conflict between vehicles and between vehicles and pedestrians.

Sirius opposed the application on grounds that the requested special exception would (a) create objectionable noise impacts for residents of the apartment building abutting the subject property as a result of the placement of mechanical equipment and an outdoor recreation space on the roof of the proposed new building, (b) compromise the operational efficiency of the apartment building by creating additional traffic in the rear alley, (c) create objectionable visual impacts due to the institutional appearance of the pedestrian bridge, (d) create traffic-related safety concerns, especially with respect to the entrance to the garage from Connecticut Avenue directly south of the pedestrian entrance to the abutting apartment building, and (e) erode the residential character of the

neighborhood through the expansion of an institutional use in an area already saturated with institutional uses.

The Van Ness Tenants argued that the Applicant should not be permitted to expand in light of its failure to comply with prior Board orders.

Persons in Opposition. The Board received letters and heard testimony from more than a dozen persons opposed to the application. Persons in opposition generally cited adverse traffic and parking impacts that would not be mitigated by the Applicant's proposed traffic management plan, Burke School's alleged noncompliance with prior orders, the proliferation of institutional uses in a residential area, and concerns about students' behavior while in the neighborhood outside the school.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. Burke School, a private, coeducational school for students in grades 6 through 12, was established in 1968 and has been located since 1973 at its current location at 2955 Upton Street, N.W. pursuant to a special exception granted in BZA Application No. 11428. The original school building has been used almost exclusively as a school since 1911. In 1983, Burke School was granted a special exception to allow construction of an addition to the original school building and to increase enrollment to a maximum of 270 students, with a faculty/staff cap of 35 (BZA Application No. 13986).

2. By order dated February 8, 2002 in BZA Application No. 16611, the Board denied the Applicant's request to expand the private school use by constructing a new building on a lot adjoining the existing building, and by increasing student enrollment to 360 and the faculty/staff cap to 70.

3. The subject property, 4101 Connecticut Avenue, N.W., where the Applicant again proposes to construct a new building, is located at the northeast corner of the intersection of Connecticut Avenue and Upton Street, N.W. The subject property (Square 2243, Lot 67) is separated by a public alley from the existing Burke School building (Square 2243, Lot 68). The site is unimproved and has a land area of approximately 14,305 square feet.

4. The subject property is located in an R-5-D zone district that also encompasses the area north of the subject property on the east side of Connecticut Avenue, which contains medium- and high-density residential development. A commercial area, zoned C-3-A, is located on the north side of Van Ness Street at Connecticut

Avenue, one block from the subject property. The campuses of Intelsat Corporation and the University of the District of Columbia are located on the west side of Connecticut Avenue across the street from and to the north of the subject property.

5. The existing school building is located in an R-2 district that encompasses the neighborhood to the east of the subject property. Upton Street is predominantly residential in the vicinity of Burke School, although the Levine School of Music and Howard University law school are also nearby.

6. A five-story apartment building (owned by Sirius, LLC, a party in opposition) abuts the subject property to the north along Connecticut Avenue. The remainder of Connecticut Avenue frontage on Square 2243 is occupied by townhouses, some of which are used for commercial purposes.

7. Connecticut Avenue in the vicinity of the subject property is characterized by a pattern of medium- and high-density residential uses alternating with moderate- and medium-density commercial centers, with lower-density residential areas typically located behind the higher density uses along the avenue.

The Proposed Private School Use

8. The Applicant proposes to construct a new building on the subject property that will be used, along with the existing Burke School building, to expand the Applicant's private school operation. The proposed new building will contain classrooms, computer rooms, photography labs, music rooms, art studios, and administrative space, and will also have a black-box auditorium. An outdoor terrace space of approximately 1,500 square feet will be provided for recreational purposes at the Connecticut Avenue corner, buffered by walls on the north and east sides.

9. The entrance to the new building will be at the corner of Connecticut Avenue and Upton Street. The new building will incorporate a curved driveway, entered from Connecticut Avenue north of the pedestrian entrance, that will lead to the new underground garage and exit onto Upton Street.

Loading facilities

10. The Applicant asserted that the new building would not require loading facilities because its size, as measured consistent with 11 DCMR § 2205.2, would be less than 30,000 square feet of gross floor area, the threshold size for a loading berth requirement pursuant to 11 DCMR § 2201.1. Alternatively, the Applicant stated

that, if loading facilities were required under the Zoning Regulations, the new building could provide a loading berth, 30 feet by 12 feet, at the rear of the property accessible by the driveway leading to Upton Street. The loading facility would include a 100-square-foot loading platform and a service/delivery loading space.

11. DDOT testified that a loading dock would not be necessary for use of the subject property as a private school, provided that occasional loading or unloading activities could be accomplished using a portion of the garage parking area.

12. The ANC and parties in opposition contended that the Applicant's proposed new building would require a loading facility under the Zoning Regulations, and that the Applicant misapplied § 2205.2 in asserting that no loading berth was needed.

13. The Board makes no finding with respect to whether the proposed new building will require loading facilities pursuant to chapter 22 of the Zoning Regulations. Rather, the Zoning Administrator will make that determination upon review of the Applicant's plans submitted as part of its application for a building permit. The Board credits DDOT's conclusion that a loading berth is not necessary to avoid any adverse traffic impacts associated with the proposed private school use of the subject property, and notes that the Applicant has indicated that a loading berth and platform could be provided at the site with access from the public alley at the rear (Exhibit 126, Attachment B-2).

Pedestrian bridge

14. The Applicant proposes to construct a pedestrian bridge to connect the new and existing buildings at the second-floor level. The bridge, approximately 33 feet long and 15 feet above ground, would cross the public alley between the existing and proposed buildings near Upton Street.

15. The Applicant testified that the front of the subject property is the property line facing Connecticut Avenue, so that the rear yard is the rectangular area (approximately 17 by 30 feet) located immediately opposite the front, where the property line bends, parallel to Connecticut Avenue, at the corner adjacent to the alley. The property line parallel to the alley separating the new building from the existing building would therefore constitute a side, and – but for the presence of the proposed pedestrian bridge – the area between the new building and the alley would constitute a side yard. (That area would be large enough to satisfy the applicable minimum width requirement.) According to the Applicant, because no side yard is required, the pedestrian bridge could be constructed as proposed, and would constitute an extension of the new building that would create two courts –

the open areas to the north and south of the pedestrian bridge – that would exceed the minimum size requirements for courts.

16. The ANC and parties in opposition asserted that the pedestrian bridge would violate zoning provisions that require unobstructed yards or courts. They argued that the rear of the subject property should be defined by the entire property line running from the Upton Street frontage to the corner of the side abutting the Sirius apartment building.

17. The Board finds that the Applicant has properly designated the rear yard of the subject property – a five-sided, irregularly shaped corner lot – as a result of its selection of the Connecticut Avenue property line as the front. Therefore, the proposed pedestrian bridge would be located where a side yard would be required, and would not violate the zoning provision requiring an unobstructed rear yard. The Board finds that the pedestrian bridge would create two open courts consistent with the minimum size required under the Zoning Regulations.

School operations

18. Trash will be removed from Burke School through the Van Ness-Upton alley, and not from the east-west alley serving residents to the east of the school. Trash removal will occur between 9:00 a.m. and 3:00 p.m.

19. Most deliveries to Burke School will continue to occur through the front door of the existing school building during school hours.

20. The Applicant proposed a "school management plan" that was made mandatory for all students as an element of their enrollment contract with Burke School. Highlights of the school management plan include:

    (a) regular operation of the private school use is limited to programs and activities of Burke School;

    (b) all non-school-related use of the buildings will be limited to no more than three events per month;

    (c) the Applicant will not lease or rent its new theater or existing gym to any outside organization, although the Applicant will, from time to time, donate the use of the theater or gym as a public service; for example, to serve as a polling place or meeting space for public bodies;

(d) an annual report of student enrollment will be made available to an enforcement committee (described below in Finding of Fact No. 22) and to ANC 3F each September;

(e) noise emanating from the Applicant's buildings will not exceed 60 dba during the day and 55 dba during the night, as measured at the property line; and

(f) trespass by Burke School students on private property is identified as an infraction of the enrollment contract.

21. The school management plan includes guidelines for monitoring and assessing the Applicant's compliance with the student enrollment and faculty/staff limits adopted by the Board, with institutional sanctions if Burke School fails to comply. The plan also addresses the monitoring and assessment of the Applicant's traffic operations and the creation of institutional sanctions if the Applicant fails to achieve an acceptable standard.

22. The Applicant proposed to establish a seven-member enforcement committee to assess the success of its school management plan, including the traffic management plan (described in Findings of Fact No. 35-37). Three members of the committee would be appointed by Burke School; three members would be residents of the surrounding neighborhood; and the seventh member would be a nonvoting mediator, skilled in mediation of neighborhood, school, and community disputes, selected by the committee from a list provided by the Federal Mediation and Conciliation Service or other neutral agency. Any dispute about which the committee cannot reach agreement could be submitted to binding arbitration. Burke School would pay the full cost of the first arbitration, and the committee could decide how to apportion costs for any additional arbitrations in the same year. The Applicant indicated a willingness to pay all mediation and arbitration costs.

23. The enforcement committee will evaluate the Applicant's performance with respect to (a) the number of violations of restrictions on student pick-ups and drop-offs (the Applicant is allowed a maximum of 10 violations per week); (b) measures taken by the Applicant to ensure successful implementation of the school management plan; and (c) the number of students and faculty/staff, as reported by the Applicant by sworn affidavit every September and January.

24. The enforcement committee may assess fines against the Applicant under certain circumstances, and will have the choice of using the fines to support

improvements in traffic management or as a donation to an agreed-upon charitable organization.

(a) The committee will issue three management evaluation reports each academic year. Two consecutive grades of unsatisfactory or three consecutive grades of poor or unsatisfactory will trigger a management sanction in the form of a fine in the dollar amount of two tuitions (currently approximately $40,000).

(b) The committee will issue enrollment evaluation reports each year in September and January. If Burke School is out of compliance with enrollment, it will pay a fine equal to the tuition paid by the number of students over-enrolled. If Burke School is out of compliance with faculty/staff, it will pay a fine equal to one tuition.

25. The Applicant will establish and maintain an escrow fund with a minimum balance of $40,000 to pay any fines imposed by the enforcement committee. The escrow fund will be held, managed, and administered by an independent trustee selected by the committee. The trust agreement will require the trustee to issue a check upon notification of a decision by the enforcement committee or an arbitrator requiring sanctions.

26. The ANC objected that the Applicant's compliance plan was not satisfactory and would place too heavy a burden on nearby residents, who would be required to monitor daily compliance with a complicated traffic management scheme, note violations, report violations to Burke School, and participate as members of the enforcement committee. The ANC also asserted that the Applicant's proposed $40,000 penalty was too small in light of the requested increase in enrollment from 270 to 300 and ultimately 320 students.

27. The Board finds that the Applicant's school management plan, together with the other conditions imposed by this order, is adequate to mitigate any adverse impacts potentially arising from operation of the proposed private school use on the subject property. The Applicant has proposed adequate measures to ensure compliance with the school management plan, including formation of the enforcement committee, designation of a contact person to receive complaints pertaining to school-related traffic and parking, and enforcement action by traffic monitors (as discussed in Finding of Fact No. 39). The Board does not agree with the ANC that the plan would require residents of the surrounding neighborhood to monitor compliance with the traffic management plan or other components of the school management plan. Rather, the Applicant's effort to ensure compliance by

students and their families allows for input from neighborhood residents but is not dependent on their participation.

Noise Impacts

28. The Applicant proposed to relocate the air conditioning and emergency electric generator now used by Burke School, currently located between the eastern wall of the existing building and the adjacent residence on Upton Street, to the center of the roof of the new building. The mechanical equipment will be located away from the neighboring apartment building, and sound-baffling will be installed to minimize noise impacts. Additional equipment also located on the roof of the new building will be surrounded by 10-foot masonry walls.

29. The Board credits the testimony of the Office of Planning that noise generated by the proposed private school use within the perimeter of the subject property will be acceptable. OP concluded that approval of the application would likely lessen the noise impacts of the private school use, in part because the expanded space available in the new building and the pedestrian bridge, which would provide enclosed access between the Burke School buildings, would encourage students to remain inside the school when not in class. In particular, the outdoor area on the roof of the new building will provide outdoor recreation space buffered by walls on two sides and will channel any noise away from the nearby residences and toward Connecticut Avenue.

30. The private school use in the existing building and in the proposed new building on the subject property will occur principally indoors or in the rooftop terrace. The new addition will be oriented toward Connecticut Avenue, away from the residential area.

31. The mechanical equipment located on the roof will be constructed so as to minimize any noise impacts. The roof structure and penthouse will be higher than the adjacent apartment building, and will comply with the requirements of § 411 of the Zoning Regulations, including with respect to setbacks from the roofline and enclosure behind walls.

32. Based on the above findings, the Board concludes that the requested special exception will not create adverse noise impacts on neighboring property.

Traffic Impacts

33. Connecticut Avenue is a major arterial street radiating from downtown Washington. The Board credits the testimony of the Applicant's traffic expert that

Connecticut Avenue presently carries approximately 3,000 to 3,700 peak-hour trips.

34. The public alley system in the vicinity of the subject property includes an alley (approximately 16 feet wide) between Upton and Van Ness Streets generally parallel to Connecticut Avenue and separating the subject property from the existing school building. This alley intersects with another alley that runs parallel to Upton Street and provides access to the six dwellings on the north side of Upton Street before dead-ending in the eastern part of Square 2243.

35. Burke School is located one block south of the Van Ness/UDC Metrorail station and is served by Connecticut Avenue Metrobus lines. The Metrorail station provides an underground pedestrian connection between the east and west sides of Connecticut Avenue that can be used by the general public without having to pay to enter the Metrorail system.

36. The Applicant's new building will contain a curved driveway crossing the subject property. Upon entering the driveway from Connecticut Avenue, drivers will choose to enter the ramp to the underground garage or to join a queue for student drop-offs and pick-ups; as many as 15 vehicles could be queued in the driveway at one time. The 10-foot-wide driveway will exit onto Upton Street and will be separated from the alley it parallels by a series of removable bollards along the eastern property line.

37. In March 2002, the Applicant implemented a morning drop-off plan in effect between 7:30 and 8:30 a.m. The morning plan was designed to reduce school-related traffic on Upton Street without burdening other residential streets and alleys. The Applicant proposed to expand the morning plan after construction of the new building so as to:

    (a) prohibit school-related traffic traveling west on Upton Street toward Burke School;

    (b) prohibit student drop-offs in front of the existing school building or in the public alley between Upton and Van Ness Streets;

    (c) prohibit access to the driveway on the subject property via any public alley between Veazey Terrace and Van Ness Street, between Van Ness and Upton Streets, or between Upton and Tilden Streets;

(d) allow use of the driveway by vehicles dropping off two or more students, with vehicles permitted to turn east or west onto Upton Street when exiting, after yielding to traffic in the adjacent public alley;

(e) allow student drop-offs from vehicles traveling south on Connecticut Avenue at the "Kiss & Ride" located outside the Van Ness/UDC Metrorail station as well as on Van Ness Street west of Connecticut Avenue and on Tilden Street either east of 29th Street or west of Connecticut Avenue; and

(f) employ two uniformed traffic monitors – stationed at the entrance to and exit from the driveway from 7:00 until 10:30 a.m. – who will help to maintain the flow of traffic from Upton Street to Connecticut Avenue and to identify families who do not adhere to traffic requirements.

38. The Applicant also proposed an afternoon pick-up plan, in effect between 3:30 and 4:30 p.m., that would move school-related traffic off Upton Street and onto pick-up lanes on the subject property. The Applicant proposed to implement the afternoon plan after construction of the new building so that:

(a) all student pick-ups will occur on the driveway and not in front of the existing building on Upton Street;

(b) vehicles arriving to pick up students will be prohibited from using Upton Street to approach the driveway;

(c) vehicles leaving the driveway will be permitted to turn east or west onto Upton Street, but may not use the alley between Upton and Tilden Streets;

(d) vehicles will leave the driveway in a single lane, yielding to alley traffic; and

(e) two uniformed traffic monitors will be stationed at the entrance to and exit from the driveway between 2:30 and 6:30 p.m.

39. In addition to the drop-off and pick-up plans, other elements of the Applicant's traffic management plan include:

(a) a Metro benefit, providing a 50-percent rebate, for all students using public transportation, where previously only students living in the District of Columbia were eligible;

(b) a Metro benefit for all faculty and staff;

(c) a shuttle van service, operating on normal school days between shuttle stops designated by the Applicant and the subject property, from 7:30 to 8:15 a.m.;

(d) a requirement that faculty, staff, and students who drive to Burke School must register their vehicles with the Applicant and display Burke School identification stickers on the vehicles;

(f) enforcement action by two uniformed traffic monitors who will monitor Upton Street for school-related vehicles parked in any restricted space in the 2900 block of Upton Street in violation of the traffic management plan;

(g) training for Burke School employees, at the beginning of each semester, on the implementation and enforcement of the traffic management plan; and

(h) designation of a contact person who will receive, and maintain a telephone log of, comments and complaints with respect to traffic and parking.

40. The Applicant's implementation of its traffic management plan – initially voluntary but subsequently made mandatory – has decreased the number of vehicles that travel to the existing Burke School for student drop-offs and pickups. Metro benefits are used by 157 students (up 24 percent from the prior year), while between 30 and 40 students ride the shuttle bus on average (double the number of the prior year).

41. The Applicant's enrollment contract obligates students and their parents to comply with the traffic management plan and imposes penalties for noncompliance. After the first violation, the parents would be required to meet with the head of school, who would explain again that each student's enrollment is contingent upon compliance and remind the parents of penalties imposed in case of future violations. A $250 fine would be imposed after a second violation by the same family, and a $500 fine after a third violation. In case of a fourth violation, the student's enrollment contract would not be renewed for the following year; or, if the student was a senior or non-returning student, disciplinary action would be taken.

42. To supplement enforcement measures, the Applicant anticipates installation of video surveillance cameras that would capture the front of the existing school building on Upton Street and the Van Ness-Upton Street alley. Additional video surveillance is possible to monitor the entrance to the driveway across the subject property.

43. The Board credits the conclusion of the Applicant's traffic expert that the additional students and employees attendant to the Applicant's proposal will have a negligible impact on traffic on Connecticut Avenue in the vicinity of Burke School. The Applicant's traffic expert estimated that traffic related to Burke School would increase by 11 morning peak-hour trips and 14 afternoon peak-hour trips. Similar estimates were made by DDOT in its study of Connecticut Avenue, which concluded that the Applicant's proposed expansion and several other new developments (residential and institutional) anticipated in the same vicinity along Connecticut Avenue would have a negligible impact on traffic, and would increase only slightly the peak-hour traffic at the intersections of Connecticut Avenue and Tilden, Upton, and Van Ness Streets.

44. The Board credits the testimony of DDOT that approval of the application would improve existing traffic conditions in the neighborhood, considering especially the Applicant's additional focus on carpools and public transportation, the shuttle bus service, and the circulation pattern associated with the new building, all of which would reduce traffic on local streets adjacent to the school. DDOT recognized that school-related traffic will likely use some residential streets during student drop-offs, but did not believe that a more dangerous situation would result; rather, DDOT concluded that the Applicant's proposed traffic routes presented the best possible solution available. The Board also credits DDOT's conclusion that the Applicant's plans for the drop-off lane exit on Upton Street and its proximity to the alley exit was proper and safe, especially with uniformed monitors present to help direct traffic.

45. The Board finds that the proposed expansion of the private school use is not likely to become objectionable to adjoining and nearby property because of traffic. The Applicant's traffic management plan is sufficient to mitigate any adverse impacts arising from an increase in school-related traffic associated with the requested special exception. Based on the findings above, the Board is not persuaded by the arguments of the ANC or parties in opposition that the Applicant's proposed drop-off locations would create congestion or unacceptable traffic safety problems in those locations.

Adequate Parking

46. Burke School currently provides 24 parking spaces on-site behind the existing building pursuant to BZA Order in Application No. 13986. Under the Applicant's proposal, three of those spaces would be reserved for the school's vans, leaving 21 parking spaces for students, employees, and visitors.

47. The proposed new building will provide parking for 47 vehicles in a two-level parking garage below grade, for a total of 68 parking spaces provided by Burke School (21 spaces behind the existing school building, after reserving three spaces for school vans; and 36 self-park and 11 tandem spaces in the new garage). The new garage will contain at least 56 full-size parking spaces (nine feet by 19 feet) as well as smaller spaces (eight feet by 16 feet) for compact cars.

48. The Applicant calculated its parking requirement on the basis that the requested increase of 35 additional faculty/staff would be allocated to the new building, creating a new parking requirement of 23 spaces on the subject property (two spaces for every three employees, pursuant to § 2101.1). The largest assembly space at the Burke School will remain the gymnasium in the existing building, for which the Board previously established a parking requirement of 24 spaces. The Applicant's parking requirement is therefore a minimum of 47 spaces.

49. Students are discouraged from driving to Burke School. Approximately 12 students drive to school during the school year. The Applicant will attempt to assign each student vehicle a parking space in the new garage or elsewhere on the school grounds. Pursuant to the Applicant's traffic management plan, students and faculty are prohibited from parking in the 2900 block of Upton Street N.W. during school hours.

50. Three 14-passenger vans, used for school activities, may be parked in the driveway. Loading and unloading will take place either in the driveway or in front of the existing building on Upton Street. Vans or buses from visiting schools will park in front of the existing building or on Connecticut Avenue when parking regulations permit, or at other locations identified with the concurrence of DDOT.

51. With respect to school-related events held in the evening, the Applicant proposed that:

    (a) Burke School will host no more than six events per year that will generate 50 or more vehicles;

    (b) special events will be scheduled to begin at 6:30 p.m. (the end of the peak period on Connecticut Avenue) or later;

    (c) an annual calendar, with monthly updates, will inform the community as to when events are scheduled;

    (d) persons attending evening events will be required to park in the underground garage at the subject property, with personnel from Burke

School assisting to manage traffic on Upton Street and to maximize the capacity and safety of the garage, including the use of stacked spaces; and

(e) during events likely to generate parking demand in excess of the capacity of the garage, the Applicant will make available off-street parking in other locations and provide shuttle service to Burke School.

52. The Board credits the conclusions of OP and DDOT that the Applicant's proposal will provide adequate parking for employees of Burke School and will be sufficient to mitigate any adverse parking impacts resulting from proposed increases in student enrollment and staff population.

53. The Board finds that the proposed expansion of the private school use is not likely to become objectionable to adjoining and nearby property because of parking, and that the Applicant's proposal – which provides for construction of a new underground garage as well as parking elements of the traffic management plan applicable to the regular operation of the private school use and to special events – will provide for ample parking space to accommodate the students, teachers, and visitors likely to come to the site by automobile.

Number of Students

54. Burke School is currently authorized to enroll a maximum of 270 students. However, the Applicant's actual student population was 299 in academic year 2001-2002 and 295 in 2002-2003. The Applicant anticipated a student population of 290 during the 2003-2004 school year.

55. The Applicant proposed to increase its authorized student enrollment initially to 300 students, with an incremental increase to 320 after four consecutive trimesters in compliance with its traffic management plan.

56. The Applicant also proposed to increase the number of faculty and staff on-site to a total of 70. Burke School currently employs 55 faculty and staff at the existing school (59 total).

57. The Office of Planning noted that the Applicant's proposed increase in enrollment – to 300 and ultimately to 320 – would represent an increase of five to 25 students over Burke School's actual enrollment in the 2002 academic year. OP concluded that the Applicant's proposed new building would provide additional facilities and allow operational changes that would likely reduce impacts of the larger student enrollment requested by the Applicant.

58. DDOT supported the proposed expansion of the student population linked with successful implementation of the Applicant's traffic management plan. DDOT noted that further adjustments of the traffic management plan and possibly a reduction in the number of students might be required if adverse traffic impacts remained after full implementation of the traffic management plan.

59. ANC 3F opposed any increase in student enrollment, and instead indicated that the enrollment cap of 270, adopted in 1983, should remain in effect.

60. The Board finds that no objectionable conditions are likely to result from an increase in enrollment to 320 students. The Board concludes that the proposed new building and attendant operational changes would mitigate any adverse impacts of the relatively small increase requested by the Applicant.

Harmony with Zoning

61. The R-5 district is a general Residence district designed to permit flexibility of design by permitting all types of urban residential development that conform to applicable height, density, and area requirements. The R-5 district also permits the construction of institutional and semi-public buildings compatible with adjoining residential uses. 11 DCMR § 350.1. The R-5-D zone permits a relatively high height and density. 11 DCMR § 350.2.

62. The Applicant's proposed new building, with four stories above grade and a two-level below-grade parking garage, will contain 34,247 square feet of gross floor area, with a height of 53 feet, floor area ratio ("FAR") of 2.1, 33 percent lot occupancy, and a rear yard of approximately 17 feet, 6 inches. The building will conform to building restrictions of the R-5-D zone, which permits maximums of 90 feet in height, 3.5 FAR, and 75 percent lot occupancy, with rear yards of at least 15 feet. 11 DCMR §§ 400.1, 402.4, 403.2, 404.1.

63. The Board credits the testimony of the Office of Planning that a 55-unit apartment building could be built on the subject property as a matter of right, given the lot size, 3.5 FAR, and 75 percent lot occupancy, and assuming that the size of a typical apartment would be 900 square feet and that 15 percent of the building would be devoted to common areas. The Board is not persuaded by the parties in opposition that the subject property is too small and "unforgiving" to serve as the location of a private school.

64. The Generalized Land Use Map of the Comprehensive Plan designates the subject property and adjacent land to the north as suitable for high-density residential use.

The Board credits the testimony of the Office of Planning that schools are generally considered part of the fabric of a residential community.

65. The Board also credits the testimony of the Office of Planning that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps. OP based its conclusion in part on (a) the location of the subject property on a principal arterial street, adjacent to the existing Burke School, convenient to public transportation, and (b) the design of the proposed new building, which will reorient the private school use toward the high-density activity of Connecticut Avenue and away from the lower-density residential neighborhood to the east.

66. The Board does not find that the design or appearance of the Applicant's new building, including the proposed pedestrian bridge, would be objectionable as having an inappropriately commercial or industrial quality in a residential neighborhood.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, 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 in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. *See* 11 DCMR § 3104.1. The Applicant seeks a special exception pursuant to 11 DCMR § 3104.1 to construct a new building in an expansion of an existing private school use, under the conditions specified in § 206, with an increase in enrollment from 270 to 320 students in grades 6 through 12, and an increase in the maximum of faculty and staff from 55 to 70 in the R-5-D district at 4101 Connecticut Avenue, N.W. and 2955 Upton Street, N.W. (Square 2243, Lots 67 and 68).

In accordance with § 206, a private school must be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions. 11 DCMR § 206.2. Ample parking space must be provided "to accommodate the students, teachers, and visitors likely to come to the site by automobile." 11 DCMR § 206.3. The Applicant must also demonstrate that the proposed private school use will be in harmony with the general purpose and intent of the Zoning Regulations and Map. 11 DCMR § 3104.1.

The Board's discretion in reviewing an application for a special exception is limited to a determination of whether an applicant has complied with the requirements of §§ 206 and

3104.1 of the Zoning Regulations. If an applicant meets its burden, the Board ordinarily must grant the application. *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981). The scope of the Board's authority is defined by statute. *See* D.C. Official Code § 6-641.07 (2001 ed.). Where permitted by the Zoning Regulations, the Board may grant a special exception "subject to appropriate principles, standards, rules, conditions, and safeguards *set forth in the regulations*." D.C. Official Code § 6-641.07(d) (emphasis added). Contrary to the argument asserted by the parties in opposition, the Board lacks the legal authority to deny an application for a special exception solely on the ground that the applicant has failed to comply with provisions of a prior grant of zoning approval.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the issues and concerns of ANC 3F, the Board concludes that the proposed expansion of the existing private school use, as conditioned by the Board, can be located at the subject property so that it is not likely to become objectionable to adjoining and nearby property. The Board has imposed conditions in this order in response to the Applicant's proposal, recommendations of OP and DDOT, and concerns raised by ANC 3F and the parties in opposition.

The Applicant's school management plan and traffic management plan adequately address adverse impacts potentially arising from the private school use. The subject property is located in an area where higher density uses are appropriate, and the Applicant's proposal, particularly the traffic management plan, offers more mitigation of the impacts of development on the subject property than would likely occur with a matter-of-right project permitted in the R-5-D zone. The new building will greatly increase Burke School's supply of parking, while the increases in enrollment and faculty/staff are not likely to create a substantial increase in demand for parking attendant to the private school use. The traffic impacts on nearby streets will likely be diminished as a result of the Applicant's proposal, especially the emphasis on public transportation and carpools, and the construction of the driveway in conjunction with the new building, which will allow student drop-offs and pick-ups to occur entirely on the subject property.

The Board accorded ANC 3F the "great weight" to which it is entitled. In doing so, the Board fully credited the unique vantage point that ANC 3F holds with respect to the impact of the proposed expansion of the existing private school use on the ANC's constituents. However, the Board concludes that the ANC has not offered persuasive advice that would cause the Board to find that the proposed new building and increases in student enrollment and in number of faculty/staff at Burke School would be contrary to the Zoning Regulations or would adversely affect the use of neighboring property, particularly in light of the conditions imposed on approval of the Applicant's proposal.

Specifically, the ANC raised concerns principally pertaining to noise generated by students and the Burke School's mechanical equipment, traffic congestion, student conduct, and construction. The Board accepts the expert testimony offered by the Applicant and the testimony of OP and DDOT on issues pertaining to noise and traffic, and concludes that the proposed private school use will not adversely affect the use of neighboring property. The Board is not persuaded by the ANC or parties in opposition that student behavior in the vicinity of the subject property is an objectionable condition related to the Burke School. With regard to construction of the new building, the Board notes that the issues and concerns raised by the ANC are not within the purview of the Zoning Regulations.[1]

For the reasons stated above, the Board concludes that the Applicant has met its burden of proof. It is hereby **ORDERED** that the application is **GRANTED** subject to the following **CONDITIONS:**

1. The new building shall be constructed in accordance with the plans prepared by Bowie Gridley Architects and marked in the record as Exhibits No. 4 and 117.

2. Upon issuance of a certificate of occupancy for the new building, the maximum enrollment shall be 320 students, phased in from an initial increase to 300 students.

3. Upon issuance of a certificate of occupancy for the new building, the maximum number of faculty and staff shall be 70.

4. The Applicant shall fully implement and comply with the school management plan (Exhibit 1 to the Applicant's pre-hearing submission, Exhibit No. 31; as modified by Finding of Fact No. 20).

5. The School shall fully implement and comply with the enforcement plan (Exhibit 2 to the Applicant's pre-hearing submission, Exhibit No. 31; as revised by Findings of Fact No. 22 and 23).

6. The School shall fully implement and comply with the traffic management plan (Applicant's pre-hearing submission, Exhibit No. 31; as revised by

[1] The Board notes that the Applicant agreed to implement a construction management plan (Exhibit 3 to the Applicant's prehearing submission, Exhibit No. 31) that will help minimize adverse impacts during construction of the new building.

Findings of Fact 37-39), with flexibility to modify its elements with the concurrence of DDOT in response to changes in traffic conditions in the vicinity of the subject property.

7. The Applicant shall resume participation in the scheduling committee with the Howard University law school, the Levine School of Music, the Hillwood Museum, the Royal Netherlands Embassy, and ANC 3F to reduce the frequency of overlapping special events held at the participating entities and to minimize the difficulties that coincident scheduling of events might impose on the surrounding neighborhood.

8. By October 1 each year, the Applicant shall provide to the Board and to ANC 3F: (a) a report indicating current student enrollment and the number of faculty/staff; and (b) an annual report by the enforcement committee reflecting its evaluation of the Applicant's performance in implementing the school management plan and traffic management plan.

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., Anthony J. Hood, and David A. Zaidain voting 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: AUG 04 2004

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 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 § 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 IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE 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. MN/RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 17022

As Director of the Office of Zoning, I hereby certify and attest that on AUG 0 4 2004 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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ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning