

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING
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MEMORANDUM

TO: Zoning Commission of the District of Columbia

FROM: Jennifer Steingasser *JLS*
Deputy Director

DATE: February, 11, 2008

SUBJECT: Final Report - Request for a Text Amendment to the Zoning Regulations, Chapter 14 (Reed-Cooke Overlay) Section 1401 (Use Provisions) and an Expedited Public Hearing

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RECOMMENDATION

The Office of Planning (“OP”) recommends that the Zoning Commission approve the proposed text amendment to clarify that off-premises alcoholic beverage sales are allowed within a grocery store located within the Reed-Cooke (RC) Overlay. OP believes that the proposed amendment is an appropriate clarification to the existing regulations and is necessary to further the District’s policies of encouraging full-service grocery stores to locate and expand throughout the city.

The proposed text was advertised as follows: (New text is shown in **bold and underline**):

Chapter 14, REED-COOKE OVERLAY DISTRICT

Section 1401.1 (b) is amended as follows:

- (b) Off-premises alcoholic beverage sales **as a principal use; except that off-premises alcohol beverage sales shall be permitted as an accessory use in a grocery store or similar permitted uses;**

OP recommends that the text be more narrowly focused by not including the phrase “or similar uses” and recommends it be adopted as follows

Chapter 14, REED-COOKE OVERLAY DISTRICT

Section 1401.1 (b) is amended as follows:

- (b) Off-premises alcoholic beverage sales **as a principal use; except that off-premises alcohol sales shall be permitted as an accessory use in a grocery store to a full**

ZONING COMMISSION
District of Columbia
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District of Columbia
CASE NO. 07-33
CASE NO. 07-33
EXHIBIT NO. 12

service grocery store and such sales shall not occupy more than five percent (5%) of the grocery sales floor area;

BACKGROUND

The Reed-Cooke area is within Ward 1 and is generally bounded by Columbia Road, NW, Euclid Street, NW, 16th Street, NW, and Florida Avenue, NW but for the most part not extending out to any of those streets. The Reed-Cooke Overlay District (Chapter 14 of the Regulations) was adopted by the Zoning Commission in 1991, by Order No. 523-A (Attachment 1). The Reed-Cooke area was the subject of a two part map and zoning text amendment which addressed the incompatibilities in use, density and height resulting from the then existing industrial C-M-2 zoning. The C-M-2 district was completely eliminated in favor of R-5-B and C-2-B districts with the Reed-Cooke Overlay.

The Reed-Cooke map and text amendment was primarily designed to implement the then adopted Comprehensive Plan and in particular the policies established for the Reed-Cooke Special Treatment Area. Those policies were cited as:

- (a) Protect current housing in the area, and provide for the development of new housing;
- (b) Maintain heights and densities at appropriate levels; and
- (c) Encourage small scale business development that will not adversely affect the residential community. (10 DCMR §1127)

The amendments were primarily focused on eliminating the industrial zoning (which did not allow residential development and which potentially allowed incompatible uses such as automobile repair, manufacturing, service and warehousing) and on how much of the area should be converted to exclusively residential zoning, as opposed to allowing for mixed-use commercial and residential development. A second major issue was the maximum height of new development, particularly in light of the narrow streets which traverse the area. The Zoning Commission ultimately decided on a balance between the R-5-B and C-2-B Districts as shown on the zoning map (Attachment 2).

The Overlay eliminated some of the uses permitted as a matter-of-right in the underlying C-2-B zones (§1401.1). One of the uses listed is "off-premises alcoholic beverage sales." (§1401.1(b)) However, §1403.1 allows exceptions to these uses that are listed as prohibited if reviewed by the Board of Zoning Adjustment as a special exception.

BZA Order 17395, adopted June 12, 2006 approved area variances from requirements applicable to the rear yard, loading berths, and enlargement of a nonconforming structure to allow the redevelopment of an existing building in a mixed-use project that will include a grocery store, retail or service uses, and general offices on the property located at 1631 Kalorama Road, NW. The Reed-Cooke Neighborhood Association (RCNA) who was a party to the proceeding submitted a motion for reconsideration of the order (BZA Order 17395-A (Attachment 3)). According to RCNA, the order improperly failed to address the issue of the

applicant's plans to allow the sales of alcoholic beverages for off premises consumption which they assert is prohibited in the Reed-Cooke overlay zone by Section 1401.1(b).

The Board denied the reconsideration stating that at the public hearing, the potential for off-premises alcoholic beverages sales was not an issue in the proceeding. The order granting the requested area variances did not also grant a special exception or variance from the prohibition against off-premises alcoholic beverage sales set forth in § 1401.1(b), as no such relief was sought by the applicant or considered by the Board.

The Zoning Administrator prepared a letter, dated March 21, 2007, (Attachment 4) affirming that the sales of wine and beer would be allowed by right at the location inasmuch as those sales would be in the nature of an accessory use, and that the use restrictions in the Reed-Cooke overlay (at § 1401.1) applied to principal uses. Opponents to the sale of beer and wine have appealed the issuance of the permits, BZA Appeals 17675 and 17677, contending that the sale of beer and wine is prohibited in all establishments and not only where the sale is a limited accessory use. To date, the BZA has not ruled on these appeals.

It is the Zoning Administrator's determination that the sale of off-premises alcohol beverage sales is an accessory use to the larger grocery store and therefore special exception review is not required. OP intention in submitting the proposed text amendment is to bring clarity to the issue and have the text explicitly state that off-premises alcohol beverage sales are permitted as an accessory use to a grocery store.

Legislation was also enacted to allow grocery stores to sell wine and beer at qualifying stores. The wine and beer amendments, adopted in July, 2000, specifically allowed qualifying grocery stores to operate outside the prevailing limit of 300 "Class B" licenses and, more critically, the prior limit of one such license per person or corporation, provided that the grocery store was "full service" and that sales of wine and beer would be "incidental" to the sale of other goods, specifically limiting the sales to be less than fifteen percent of overall annual receipts.

Section 701.4(l) of the Zoning Regulations permit grocery stores as a matter-of-right in the C-1 District and is therefore permitted as a matter-of-right use in the C-2 district as a carryover. Further, Section 722, Accessory Uses and Buildings (C-2) states:

"722.3 Other accessory uses customarily incidental and subordinate to the uses permitted in C-2 Districts shall be permitted in the C-2 District."

From OP's review of the file that created the overlay, (ZC Case 88-19) there was no evidence that there were discussions as to the extent of the prohibition of alcohol beverage sales, and whether or not it could or could not be allowed as an accessory use. Although not explicitly stated in the record, it is OP's understanding that the circumstances at the time was that there were a proliferation of liquor stores in the community which were presenting social as well as environmental problems within the Reed-Cooke area and the intent of this restriction was to prevent what is conventionally described as a liquor store from opening in the area subject to the

Overlay and concentrate such uses, liquor store, restaurants, bars, etc., outside of the area such as along 18th Street.

One of the policies of the Reed-Cooke Overlay is to “*encourage small scale business that will not adversely affect the residential community*”. This is a general policy of the Overlay. However, the Citadel could be seen as an exception to this policy because of the size, the largest non-residential building in the community, and the C-2-B zoning of the property. It is not unreasonable to have expected that it would not accommodate a “small scale business”. The regulations did not limit the uses permitted on the site.

PROPOSAL

The grocery store is being constructed in the Citadel building, located at 1631 Kalorama Road, at the northeast corner of the intersection of Kalorama Road and 17th Street, N.W., on a property zoned RC/C-2-B. The grocery store will have in excess of 30,000 square feet of floor area, with the area devoted to the sale of beer and wine and would comprise less than 1,500 square feet.

The OP proposes that the Regulations be amended to allow a grocery store which offers a full complement of goods and services be allowed to sell beer and wine as part of the range of products. The proposed text amendments would:

- Only apply to the off-premise alcoholic beverage sales use otherwise restricted in the Reed-Cooke overlay district;
- Only apply to such sales in a grocery store where the sales would clearly be a minor part of the overall business; and
- Continue to restrict within the Reed-Cooke Overlay’s area, the sale of alcoholic beverages either as a principal use.

Concerns have been expressed that allowing off-premises alcoholic beverage sales as an accessory use will open the possibility for all other permitted uses to have off-premises alcoholic beverage sales. In the Reed-Cooke area most of the areas that are zoned RC/C-2-B have been redeveloped. However, there is no constraint on the reallocation of space to accommodate this use. OP would therefore propose an alternative to the proposed language that would limit off-premises alcoholic beverage sales as an accessory use to grocery stores.

OP therefore recommends that Section 1401.1(b) be amended as follows:

- (b) Off-premises alcoholic beverage sales **as a principal use; except that off-premises alcohol sales shall be permitted as an accessory use in a grocery store to a full service grocery store and such sales shall not occupy more than five percent (5%) of the grocery sales floor area;**

Comprehensive Plan Recommendation

The amendments sought are consistent with the provisions of the Comprehensive Plan and are in the nature of a clarification and not a fundamental change of existing zoning. The amendments are consistent with the Economic Development Element and the Mid-City Element of the Plan as demonstrated below.

Grocery stores are the focus of specific policies in the Plan and a policy of the **Economic Development Element** states:

Policy ED-2.2.6: Grocery Stores and Supermarkets

Promote the development of new grocery stores and supermarkets, particularly in neighborhoods where residents currently travel long distances for food and other shopping services. Because such uses inherently require greater depth and lot area than is present in many commercial districts, **adjustments to current zoning standards to accommodate these uses should be considered.** (emphasis added.)

The property is mentioned by name within **Mid-City Area Element**:

MC-2.4 18th Street/Columbia Road

The neighborhood continues to experience growing pains as it grapples with strong demand for housing and the popularity of its entertainment scene. To the east of 18th Street, a zoning overlay was created for the Reed-Cooke area in 1989 to protect existing housing and ensure compatible infill development on a number of large properties. Several large low-rise condominium projects were developed in the 1990s and early 2000s, **and today there are plans for a new grocery store in the former Citadel skating rink.** (emphasis added)

The plans for the store in the Citadel were set out in detailed floor layout diagrams the Department of Consumer and Regulatory Affairs (“DCRA”) reviewed when the store applied for a building permit. The building permit was issued on November 13, 2006, only after DCRA concluded that all of the requirements of the Regulations had been met.

RECOMMENDATION

OP recommends that the Zoning Commission **approve** the proposed text amendment to clarify that off-premises alcoholic beverage sales are allowed within a grocery store located within the Reed-Cooke (RC) Overlay. OP believes that the proposed amendment is an appropriate clarification to the existing regulations and is necessary to further the District's policies of encouraging full-service grocery stores to locate and expand throughout the city.

(New text is shown in **bold and underline**):

Chapter 14, REED-COOKE OVERLAY DISTRICT

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ATTACHMENTS:

1. Zoning Commission Order 523-A
2. Zoning Map
3. BZA Order 17395-A
4. Memorandum for the Zoning Administrator

JLS/mbr

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER 523-A
Case No. 88-19
(Reed-Cooke Special Treatment Area:
Text and Map Amendment)
February 11, 1991

The Zoning Commission initiated this case to consider amendments of the text and map of the Zoning Regulations that would implement the Comprehensive Plan for the National Capital, and in particular, Section 1128 of the Land Use Element, which reads as follows:

Section 1128.
Reed-Cooke
Special Treatment
Area

- (a) The Reed-Cooke area is designated as a special treatment area.
- (b) The policies established for the Reed-Cooke special treatment area are as follows:
 - (1) Protect current housing in the area, and provide for the development of new housing.
 - (2) Maintain heights and densities at appropriate levels; and
 - (3) Encourage small-scale business development that will not adversely affect the residential community.

D.C. Law 8-129, the District of Columbia Comprehensive Plan Amendments Act of 1989, became effective on May 23, 1990. Law 8-129 did not amend Sec. 1128; however, Sec. 2(a)(10)(L) of Law 8-129 adopted Sec. 1136(b)(42) to provide that the Generalized Land Use Map, as revised, would generally depict the Reed-Cooke Special Treatment area as "included in the moderate density residential land use category."

The Zoning Commission believes that the action that it effects by this order harmonizes Sec. 1128 and Sec. 1136(b)(42) of the Land Use Element. The rezoning action protects current housing and provides for the development of new housing, by rezoning the C-M-2 zoned portions to R-5-B, C-2-A, or C-2-B, within the Reed-Cooke (RC) Overlay. These zoning map changes provide a favorable zoning environment for continued residential and new residential development.

This contrasts sharply with the previous C-M-2 zoning, under which no new dwelling would be allowed. See 11 DCMR 800.4.

Consideration of this case has been long and has presented the Commission with the need to make a difficult choice. The amendment to the Land Use Element reflects the same difficulty. Existing residential, commercial, and industrial uses are juxtaposed in the area. All are thriving, at least sufficiently to deserve protection. These uses are not easily made compatible, and their proximity causes problems that detract from the reasonable enjoyment of the residential uses. The difficulties are compounded by narrow, crowded streets, and sharply-angled and dog-leg intersections.

The Office of Planning conscientiously crafted a proposal that undertook to resolve these issues. The OP proposal clearly established the correct direction and included the essential elements of the decision that the Commission has reached. That proposal was to rezone the area to C-2-B within the RC Overlay. OP concluded that a C-2-B base zone would protect and encourage residential uses consistently with the Comprehensive Plan, and at the same time provide a greater measure of viability for the established commercial and industrial uses, again consistent with the plan, than would an R-5-B base.

The Commission's conclusion is different in several ways from the OP recommendation, but is essentially based on the OP analysis. The Commission has decided that a substantial area of R-5-B base zoning is reasonable and necessary to protect current housing and provide for the development of new housing, and that a lower height limit is necessary to effect the same policies.

The final action that the Commission effects by this Order is based upon two notices of proposed rulemaking, which appeared in the D.C. Register on August 3, 1990, and November 9, 1990 (37 DCMR 5106 and 7139, respectively). The second notice followed a public hearing on September 13, 1990, at which the Commission considered several issues that were not within the scope of the earlier public hearing. The comments on the proposed rules are set forth below.

RAM, the Reed-Cocke Neighborhood Association, urged that special exceptions not be allowed as a means of relief from the RC Overlay provisions; that access to and from parking uses be limited to streets wider than sixty feet; and that assembly halls, auditoriums, and public halls, be added as prohibited uses. RAM also observed that the Citadel Soundstage had stopped operating.

assembly halls, auditoriums, and public halls, be added as prohibited uses. RAM also observed that the Citadel Soundstage had stopped operating.

ANC 1-C continued to urge the Zoning Commission to set a hearing on pure residential zoning; limit height to 50 feet, including roof structures within the 50-foot limit; and provide linkage for housing for low and moderate income families, with the benefits linked to the Reed-Cooke area. ANC 1-C also supported proposed 11 DCMR 1400.5(c) and (d), and 11 DCMR 1401.1(u) through (x).

The 18th & Columbia Road Business Association supported the 50-foot height limit; parking uses, with ANC review, rather than as a special exception; and flexibility for the height and floor area of PUDS.

A number of property owners or their counsel requested particular exemptions or changes to accommodate various specific properties, including the Security Storage Site at 1701 Florida Ave., the site leased by C&P Telephone Co. at 1711 Florida Ave., and the former National Geographic warehouse at 1707 Kalorama Road.

The Zoning Commission referred both notices of proposed rulemaking to NCPC, the National Capital Planning Commission. By comments dated October 4, 1990, and December 14, 1990, NCPC reported that the proposed amendments would not adversely affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan.

At its meeting on February 11, 1991, the Zoning Commission considered the written comments, and determined:

1. Deletion of proposed sub-sections 1401.2 and 1401.3 is appropriate, because of the termination of the particular use that the provisions would have protected;
2. The preferred version of proposed sub-section 1402.1 is the version that includes an incentive to provide low and moderate income household units;
3. It would not be practical to prohibit access to parking uses from streets that are not wider than sixty feet; and
4. Other recommended changes have been considered, but do not require explicit discussion.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, are not

inconsistent with the Comprehensive Plan for the National Capital, and will appropriately implement and advance the objectives and policies established in the Comprehensive Plan.

In consideration of the reasons set further herein, the Zoning Commission hereby orders APPROVAL of amendments to the Zoning Regulations to establish and map a Reed-Cooke Overlay Zone District, and make related amendments to the Zoning Map. The specific amendments to the Zoning Regulations are as follows:

1. Amend the text of the Zoning Regulations by adopting a new Chapter 14 of Title 11, to read as follows:

CHAPTER 14 REED-COOKE OVERLAY DISTRICT

1400 GENERAL PROVISIONS

1400.1 The Reed-Cooke Overlay District is applied to the portions of Squares 150, 2557, 2558, 2560, 2562, 2563, 2566, 2567, and 2572 in the Reed-Cooke Special Treatment Area, as defined in the Comprehensive Plan, that are zoned non-residentially as of January 1, 1989.

1400.2 The purposes of the District are as follows:

- (a) To implement the objectives of the Reed-Cooke Special Treatment Area (Section 1128 of the Comprehensive Plan as adopted), which are to:
 - (1) Protect current housing in the area, and provide for the development of new housing;
 - (2) Maintain heights and densities at appropriate levels; and
 - (3) Encourage small-scale business development that will not adversely affect the residential community.
- (b) To ensure that new non-residential uses serve the local community by providing retail goods, personal services, and other activities that contribute to the satisfaction of unmet social, service, and employment needs in the Reed-Cooke and Adams-Morgan community; and

- (c) To protect adjacent and nearby residences from damaging traffic, parking, environmental, social, and aesthetic impacts.

1400.3 The Reed-Cooke Overlay District and the underlying commercial and residential zone districts shall together constitute the Zoning Regulations for the geographic area identified in sub-section 1400.1.

1400.4 Where there are conflicts between this chapter and the underlying zoning district, the more restrictive regulations shall govern.

1400.5 In addition to other applicable provisions of this title, the requirements of this chapter shall apply to the following:

- (a) All new construction;
- (b) All additions, alterations, or repairs that, within any 18 month period exceed in cost 50 percent (50%) of the assessed value of the structure as set forth in the records of the Office of Property Assessment on the date of the application for a building permit;
- (c) Any use that requires a change in the use listed on the owner's or lessee's certificate of occupancy; and
- (d) Any existing use that requires a new permit from the Alcoholic Beverage Control Board.

1400.6 If there is a dispute between the property owner and the Zoning Administrator about the cost pursuant to sub-section 1400.5(b), the cost shall be determined by the average of the estimates furnished by three independent qualified contractors, the first of whom shall be selected by the owner, the second of whom shall be selected by the Zoning Administrator, and the third of whom shall be selected by the first two contractors.

1400.7 The estimates provided for by sub-section 1400.6 shall be prepared and submitted according to a standard procedure and format established by the Zoning Administrator, and the cost of estimates shall be at the expense of the property owner.

1401 USE PROVISIONS

1401.1 The following uses are prohibited in the Reed-Cooke Overlay District:

- (a) Bar or cocktail lounge;
- (b) Off-premises alcoholic beverage sales;
- (c) Restaurant or fast food restaurant;
- (d) Hotel or inn;
- (e) Transient accommodations that are not home occupations;
- (f) Movie theater;
- (g) Gasoline service station or repair garage;
- (h) Automobile laundry;
- (i) Drive-through;
- (j) Automobile or truck sales;
- (k) Boat or other marine sales;
- (l) Motorcycle sales or repair;
- (m) Automobile rental agency that stores or services automobiles within the Overlay District;
- (n) Billiard parlor or pool hall;
- (o) Video game parlor;
- (p) Bowling alley;
- (q) Funeral mortuary or other similar establishment;
- (r) Parcel delivery service establishment other than one that is exclusively dedicated to serving a sound stage or a movie, video, or television production facility that existed on the effective date of this chapter;
- (s) Veterinary hospital;
- (t) On-premises dry cleaning establishment;
- (u) Assembly hall, auditorium, or public hall;
- (v) Bus passenger depot;
- (w) Antenna tower in excess of twenty (20) feet in height;
- (x) Satellite reception dish that is greater than fifteen (15) feet in diameter; and
- (y) Any use prohibited in the CR District by sub-section 602.1 of this title, except a parking lot as permitted by sub-section 1403.2 of this chapter.

1402 HEIGHT AND BULK PROVISIONS

1402.1 The maximum height permitted in the Reed-Cooke Overlay District shall not exceed forty (40) feet plus roof structure as defined in this title; provided that in the RC/C-2-B District the Board of Zoning Adjustment may approve a maximum height of fifty (50) feet with appropriate set-backs from the street, plus roof structures, subject to

determination by the Board that the project will provide for the on-site construction or substantial rehabilitation of low and moderate income household units, as defined by the regulations of the Department of Housing and Community Development of the District of Columbia, of a total gross floor area equal to fifty percent (50%) of the additional gross floor area made possible by this exception.

1402.2 For the purpose of this chapter, no Planned Unit Development shall exceed the matter-of-right height, bulk, and area requirements of the underlying district.

1403 EXCEPTIONS

1403.1 An exception from the requirements of this chapter shall be permitted only if granted by the Board of Zoning Adjustment as a special exception after a public hearing, and subject to the following criteria:

- (a) The use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the Reed-Cooke Overlay District;
- (b) Vehicular access and egress shall be designed and located so as to minimize conflict with pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic condition;
- (c) Adequate off-street parking shall be provided for employees, trucks, and other service vehicles;
- (d) If located within a C-2-B zone, the use shall not be within 25 feet of a Residence District, unless separated therefrom by a street or alley;
- (e) Noise associated with the operation of a proposed use will not adversely affect adjacent or nearby residences;
- (f) No outdoor storage of materials, nor outdoor processing, fabricating, or repair shall be permitted; and

- (g) The use, building, or feature at the size, intensity, and location proposed will not adversely affect adjacent and nearby property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area.

1403.2 A parking lot or parking garage shall be permitted if approved by the Board of Zoning Adjustment as a special exception, subject to the following:

- (a) The parking lot or garage shall meet the conditions specified in sub-sections 214.4 through 214.8 of chapter 2 of this title;
- (b) The parking lot or garage shall meet the conditions set forth in sub-section 1403.1 of this section; and
- (c) The Board may require that all or a portion of the parking spaces be reserved for residential parking, unrestricted commercial parking, accessory parking for uses within 800 feet, and shared parking for different uses by time of day.

2. Rezone from C-M-2 to RC/C-2-B the following lots and squares:

- a. In Square 2560, Lots 64, 125, 875, and 882;
- b. In Square 2572, Lot 36;
- c. In Square 2562, all lots now zoned C-M-2 and not occupied by the Marie Reed School, including Lots 95, 97, and 824;
- d. In Square 2567, Lots 58 through 60, 81, and 851;
- e. In Square 2566, all lots now zoned C-M-2 and not rezoned to RC/R-5-B in the following paragraph numbered 3; and
- f. Any lot in Square 2560, 2567, or 2572 that is now zoned C-M-2 and not specifically listed in this paragraph.

3. Rezone from C-M-2 to RC/R-5-B the following lots and squares:


- a. In Square 2563, Lots 73, 79 through 81, 97, 98, 101, 816, 862, 879, 880, 883 through 885, and 887;
 - b. In Square 2558, the portion of the Square that is now zoned C-M-2;
 - c. In Square 2562, the portion of the Square that is now zoned C-M-2 and occupied by the Marie Reed School;
 - d. In Square 2566, Lot 36; Lot 55 (or 95) (occupied by Colortone Press); and Lots 839 and 841 from Ontario Road to a line parallel to and 70 feet east of Ontario Road; and
 - e. Any lot in Square 2558 or 2563 that is now zoned C-M-2 and is not specifically listed in this paragraph.
4. Rezone from C-M-2 to RC/C-2-A following lots and squares:
- a. In Square 2557, Lot 800;
 - b. In Square 150, Lot 800; and
 - c. Any lot in Square 150 or 2557 now zoned C-M-2, and not specifically listed in this paragraph.

Vote of the Zoning Commission on proposed action on April 16, 1990: 4-0, in part; 5-0, in part; and 3-1, in part (Maybelle Taylor Bennett, John G. Parsons, Tersh Boasberg, and William Ensign to approve proposed amendments to the text of Title 11; and, except as specified herein, to approve proposed amendments to the Zoning Map; Lloyd D. Smith not voting, not present; Maybelle Taylor Bennett, John G. Parsons, Tersh Boasberg, William Ensign, and Lloyd D. Smith to approve proposed rezoning in Square 2562; John G. Parsons, Maybelle Taylor Bennett, and Tersh Boasberg to approve proposed rezoning in Square 2566; William Ensign, opposed; Lloyd D. Smith not present, not voting).

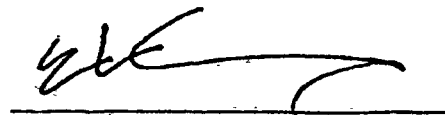
Vote of the Zoning Commission on proposed action on October 15, 1990: 4-1 in part, and 5-0 in part (Lloyd D. Smith, John G. Parsons, Maybelle Taylor Bennett, and William Ensign to approve an alternative text of 11 DCMR 1402.1; Tersh Boasberg, opposed; and Lloyd D. Smith, John G. Parsons, Maybelle Taylor Bennett, William Ensign, and Tersh Boasberg to approve proposed 11 DCMR 1400.5(c) and (d), and 11 DCMR 1401.1(u) through (y).

This order and amendments to Title 11, DCMR, and to the zoning map, were revised and adopted by the Zoning Commission at its meeting on February 11, 1991, by a vote of 5-0 (Maybelle Taylor Bennett, William L. Ensign, Tersh Boasberg, Lloyd D. Smith, and John G. Parsons to approve.

Pursuant to 11 DCMR 3028, this Order shall be final and effective when it is published in the D.C. Register, that is, on APR 26 1991.



TERSH BOASBERG
Chairman
Zoning Commission



EDWARD L. CURRY
Executive Director
Zoning Secretariat

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17395-A of Jemal's Citadel LLC pursuant to 11 DCMR § 3103.2, for a variance from the rear yard requirements under section 774, a variance from the nonconforming structure requirements under subsection 2001.1, a variance from the requirement to provide a loading berth that is 55 feet deep under subsections 2201.1 and 2201.6, to allow the establishment of a mixed-use project including a grocery store and general offices in an RC/C-2-B zone district at the premises 1631 Kalorama Road, N.W. (Square 2572, Lot 36).

HEARING DATE: November 29, 2005
DECISION DATE: January 10, 2006
FINAL ORDER DATE: June 12, 2006
**RECONSIDERATION
DECISION DATE:** July 11, 2006

ORDER DENYING RECONSIDERATION

By order issued June 12, 2006, the Board granted approval, subject to conditions, of an application submitted July 1, 2005 by Jemal's Citadel LLC ("Applicant"), the owner of the property that is the subject of the application. The self-certified application requested area variances from requirements applicable to the rear yard, loading berths, and enlargement of a nonconforming structure to allow the redevelopment of an existing building in a mixed-use project that will include a grocery store, retail or service uses, and general offices in the Reed-Cooke/C-2-B zone at 1631 Kalorama Road, N.W. (Square 2572, Lot 36).

Parties in this proceeding are the Applicant, Advisory Neighborhood Commission 1C, and a group comprising the Reed Cooke Neighborhood Association, whose membership includes residents surrounding the Citadel building, and residents living near the subject property in the 1600 block of Kalorama Road or the 2300 block of 17th Street.

On June 26, 2006, the Reed Cooke Neighborhood Association ("RCNA") submitted a motion for reconsideration of the order approving the application. According to RCNA, the order improperly failed to address an issue raised by RCNA concerning the Applicant's plans "to use the subject premises for sales of alcoholic beverages for off-premises consumption," a use that is prohibited in the Reed-Cooke overlay zone.

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

In a response submitted June 30, 2006, the Applicant argued that RCNA had not provided any new evidence that could not have been presented at the public hearing but had acknowledged that the question of sales of alcoholic beverages for off-premises consumption was "repeatedly raised" at the hearing. The Applicant urged denial of RCNA's motion for reconsideration for failure to meet the standard set forth in § 3126.6 of the Zoning Regulations.

CONCLUSIONS OF LAW

The Board is not persuaded that its final decision to approve the application with conditions was in error. As noted by RCNA in its motion, the Applicant's request for variances did not include a request for relief from the prohibition against off-premises alcoholic beverage sales applicable in the Reed Cooke overlay zone. See 11 DCMR § 1401.1(b). Thus, notwithstanding RCNA's assertions at the public hearing, the potential for off-premises alcoholic beverages sales was not an issue in this proceeding. The order granting the requested zoning relief – area variances related to rear yard, nonconforming structure, and loading requirements – did not also grant a variance from the prohibition against off-premises alcoholic beverage sales set forth in § 1401.1(b); no such relief was sought by the Applicant or considered by the Board.

Accordingly, it is therefore ORDERED that the motion for reconsideration is DENIED.

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., Gregory Jeffries, and John A. Mann II (by absentee vote) to deny the motion)

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

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: DEC 14 2006

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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



BZA APPLICATION NO. 17395-A

As Director of the Office of Zoning, I hereby certify and attest that on **DECEMBER 14, 2006**, 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:

Norman M. Glasgow, Jr., Esquire
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006

Jemal's Citadel LLC
702 H Street, N.W., Suite 400
Washington, D.C. 20001-3875

Reed Cooke Neighborhood Association
c/o Maureen Gallagher
1656 Kalorama Road, N.W.
Washington, D.C. 20009

Reed Cooke Neighborhood Association
c/o Simi Batra
1710 Euclid Street, N.W.
Washington, D.C. 20009

Chairperson
Advisory Neighborhood Commission 1C
P.O. Box 21009
Washington, D.C. 20009

**BZA APPLICATION NO. 17395-A
PAGE NO. 2**

Single Member District Commissioner 1C07
Advisory Neighborhood Commission 1C
P.O. Box 21009
Washington, D.C. 20009

Bill Crews
Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

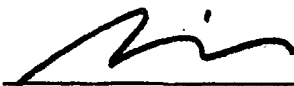
Councilmember Jim Graham
Ward One
1350 Pennsylvania Avenue, N.W.
Suite 105
Washington, D.C. 20004

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

Alan Bergstein
Office of the Attorney General
441 4th Street, N.W., 7th Floor
Washington, D.C. 20001

David Rubenstein
Deputy General Counsel
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning ↓

TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR

★ ★ ★



March 21, 2007

FILE

Mr. Norman M. Glasgow, Jr.
Mr. Steven E. Sher
Holland and Knight, LLC
Suite 100
2099 Pennsylvania Avenue, NW
Washington DC 20006

Pdf

Re: Harris Teeter Grocery Store at the Citadel

Gentlemen:

This is to confirm the substance of our discussion on Thursday, January 18, 2007, concerning the above referenced project. The project property, located at 1631 Kalorama Road, NW, is zoned C-2-B (Commercial) and is in the Reed-Cooke Overlay District (RC). The subject property is being renovated for use as a grocery store and offices, pursuant to Order No. 17395 of the Board of Zoning Adjustment.

The Reed-Cooke Overlay District prohibits "off-premises alcoholic beverage sales." (11 DCMR §1401.1(b)) However, a grocery store is a use permitted as a matter-of-right in a C-1 District under §701.4(l) and is therefore permitted as a matter-of-right by carry-over in the C-2 Districts. Accessory uses customarily incidental and subordinate to the uses permitted in a C-2 District are also permitted (see §722.3).

You have advised that the grocery store to be located on the property desires to sell alcoholic beverages as part of the items for sale on the premises. The sale of beer and wine is customarily a part of what is sold at a retail grocery store and is normally subordinate to the food and grocery sales.

The Council of the District of Columbia amended the alcoholic beverage control law (D.C. Official Code, §§ 25-331, 25-332 and 25-333) to provide an exception to the moratorium on Class B licenses for businesses where the primary purpose is the sale of a full range of food items and where the sale of alcoholic beverages is incidental to the primary purpose and furthermore does not exceed

941 North Capitol Street, N.E., Suite 2000, Washington, D.C. 20002
Phone: (202) 442-4576 Fax: (202) 442-4871

RAA

Mr. Norman M. Glasgow, Jr.

Mr. Steven E. Sher

Re: Harris Teeter Grocery Store at the Citadel

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more than fifteen percent of the total volume of gross receipts on an annual basis (D.C. Law 13-298, effective May 3, 2001).

Decisions of previous Zoning Administrators, the Board of Zoning Adjustment and the D.C. Court of Appeals have upheld the principle that a use would be considered incidental, subordinate and accessory if it constituted less than twenty percent of the business volume or square footage of the overall use (see, especially, *Association for Preservation of 1700 Block of N Street, N.W. and Vicinity v. D.C. Board of Zoning Adjustment* (DC App., 384 A.2d 668, 1978).

Accordingly, I concur that the subordinate sale of beer and wine for off-premises consumption is an allowable accessory use for a retail grocery store and that the restrictions in §1401.1(b) applies to principal uses only and not to accessory sales within a grocery store.

Please let me know if you have any further questions regarding this matter.

Best regards,

A handwritten signature in cursive script that reads "Bill Crews". The signature is written in dark ink and is positioned above a horizontal line.

Bill Crews

Zoning Administrator for the District of Columbia