VOL. 62 – NO. 39 SEPTEMBER 18, 2015

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council schedules a public hearing on Bill 21-070, Nuisance Abatement Notice Amendment Act of 2015
- D.C. Council schedules a public hearing on Bill 21-113, Vending Regulations Amendment Act of 2015
- Department of Behavioral Health solicits certification applications for certain categories of services and providers
- Department of Health updates regulations for marriage and family therapists and graduate professional counselors
- Office of the State Superintendent of Education announces funding availability for FY2016 Pre-Kindergarten Enhancement and Expansion
- Office of the Deputy Mayor for Planning and Economic Development publishes technical amendments to the FY2016 Creative and Open Space Modernization Grant
- Department of Small and Local Business Development announces funding availability for the DC Main Streets (Congress Heights Target Areas)

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances publishes the *District of Columbia Register* (ISSN 0419-439X) every Friday under the authority of the *District of Columbia Documents Act*, D.C. Law 2-153, effective March 6, 1979, D.C. Official Code § 611 et *seq*. (2012 Repl.). The policies which govern the publication of the *Register* are set forth in the Rules of the Office of Documents and Administrative· Issuances (1 DCMR §§300, *et seq.*). The Rules of the Office of Documents and Administrative Issuances are available online at dcregs.dc.gov. Rulemaking documents are also subject to the requirements of the *D.C. Administrative Procedure Act*, D.C. Official Code §§2-50l et *seq.* (2012 Repl.).

All documents published in the *District of Columbia Register (Register)* must be submitted in accordance with the applicable provisions of the Rules of the Office of Documents and Administrative Issuances. Documents which are published in the *Register* include (1) Acts and resolutions of the Council of the District of Columbia; (2) Notices of proposed Council legislation, Council hearings, and other Council actions; (3) Notices of public hearings; (4) Notices of final, proposed, and emergency rulemaking; (5) Mayor's Orders and information on changes in the structure of the D.C. government (6) Notices, Opinions, and Orders of D.C. Boards, Commissions and Agencies; (7) Documents having general applicability and notices and information of general public interest.

Deadlines for Submission of Documents for Publication

The Office of Documents and Administrative Issuances accepts electronic documents for publication using a Web-based portal. To submit documents for publication, agency heads, or their representatives, may obtain a username and password by email at dcdocuments@dc.gov. For guidelines on how to format and submit documents for publication, email dcdocuments@dc.gov.

The deadline for filing documents for publication for District of Columbia Agencies, Boards, Commissions, and Public Charter schools is THUSDAY, NOON of the previous week before publication. The deadline for filing documents for publication for the Council of the District of Columbia is WEDNESDAY, NOON of the week of publication. If an official District of Columbia government holiday falls on Thursday, the deadline for filing documents is Wednesday. Email the Office of Documents and Administrative Issuances at dcdocuments@dc.gov to request the *District of Columbia Register* publication schedule.

Viewing the DC Register

The Office of Documents and Administrative Issuances publishes the *D.C. Register* ONLINE every Friday at www.dcregs.dc.gov. The Office of Documents does not offer paid subscriptions to the *D.C. Register*. Copies of the *Register* from April 2003 through July 2010 are also available online in the *D.C. Register* Archive on the website for the Office of the Secretary at www.os.dc.gov. Hardcopies of the Register from 1954 to September 2009 are available at the Martin Luther King, Jr. Memorial Library's Washingtonian Division, 901 G Street, NW, Washington, DC 20001. There are no restrictions on the republication of any portion of the *Register*. News services are encouraged to publish all or part of the *Register*.

Legal Effect of Publication - Certification

Except in the case of emergency rules, no rule or document of general applicability and legal effect shall become effective until it is published in the *Register*. Publication creates a rebuttable legal presumption that a document has been duly issued, prescribed, adopted, or enacted and that the document complies with the requirements of the *District of Columbia Documents Act* and the *District of Columbia Administrative Procedure Act*. The Administrator of the Office of Documents and Administrative Issuances hereby certifies that this issue of the *Register* contains all documents required to be published under the provisions of the *District of Columbia Documents Act.*

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

RM 520 – 441 4th ST, ONE JUDICIARY SQ. - WASHINGTON, D.C. 20001 - (202) 727-5090

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

CONTENTS

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

PUBLIC HEARINGS CONT'D

FINAL RULEMAKING

PROPOSED RULEMAKING

NOTICES, OPINIONS, AND ORDERS
MAYOR'S ORDERS

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D
BOARDS, COMMISSIONS, AND AGENCIES

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D
BOARDS, COMMISSIONS, AND AGENCIES CONT'D

Council of the District of Columbia
Committee on Business, Consumer, and Regulatory Affairs,
Notice of a Public Hearing

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 119 Washington, DC 20004

Revised and Abbreviated

Councilmember Vincent B. Orange, Sr., Chair
Committee on Business, Consumer, and Regulatory Affairs

Announces a Public Hearing

on

- **B21-069, the "Construction Codes Harmonization Amendment Act of 2015"**
- **B21-070, the "Nuisance Abatement Notice Amendment Act of 2015"**
- **B21-113, the "Vending Regulations Amendment Act of 2015"**

Monday, October 5, 2015, 10:00 A.M.
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Councilmember Vincent B. Orange, Sr., announces the scheduling of a public hearing by the Committee on Business, Consumer, and Regulatory Affairs, on B21-069, the "Construction Codes Harmonization Amendment Act of 2015", B21-070, the "Nuisance Abatement Notice Amendment Act of 2015", and B21-113, the "Vending Regulations Amendment Act of 2015". The public hearing is scheduled for Monday, October 5, 2015 at 10:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW, Washington, DC 20004. ***Due to the expected delays related to the Papal visit and Yom Kippur, the hearing notice is being revised to reflect the change in the date of the public hearing from Wednesday, September 23, 2015 to Monday, October 5, 2015. In addition, the notice is being abbreviated in order to provide timely notice to the public.***

B21-069, the "Construction Codes Harmonization Amendment Act of 2015", would align the District of Columbia Code with the District's new Construction Codes, which are based on national model codes developed by the International Code Council. The bill authorizes the Mayor to adopt fire safety standards, to abate unsafe conditions, to recover abatement costs through tax liens, and to take summary action where there is an imminent danger. In addition, the bill creates a board for the condemnation of insanitary buildings in the District of Columbia.

B21-070, the "Nuisance Abatement Notice Amendment Act of 2015", would clarify the posting requirements for an initial vacant or blighted property determination.

B21-113, the "Vending Regulations Amendment Act of 2015", would amend the Vending Regulation Act of 2009 to maintain the criminal penalties provisions.

Individuals and representatives of organizations who wish to testify at the public hearing are asked to contact Faye Caldwell of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at fcaldwell@dccouncil.us and provide their name(s), address, telephone number, email address and organizational affiliation, if any, by close of business Friday, October 2, 2015. Each witness is requested to bring 20 copies of his/her written testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. The official record will remain open until close of business Monday, October 19, 2015. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Council of the District of Columbia
Committee on Business, Consumer, and Regulatory Affairs,
Notice of a Public Hearing

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 119 Washington, DC 20004

Revised and Abbreviated

Councilmember Vincent B. Orange, Sr., Chair
Committee on Business, Consumer, and Regulatory Affairs

Announces a Public Hearing

on

- **B21-137, the "Workforce Job Development Grant-Making Reauthorization Act of 2015"**
- **B21-206, the "Film DC Economic Incentive Amendment Act of 2015"**

Monday, October 5, 2015, 4:00 P.M.
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Councilmember Vincent B. Orange, Sr., announces the scheduling of a public hearing by the Committee on Business, Consumer, and Regulatory Affairs, on B21-137, the "Workforce Job Development Grant-Making Reauthorization Act of 2015" and B21-206, the "Film DC Economic Incentive Amendment Act of 2015". The public hearing is scheduled for Monday, October 5, 2015 at 4:00 p.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW, Washington, DC 20004. ***Due to the expected delays related to the Papal visit the hearing notice is being revised to reflect the change in the date of the public hearing from Thursday, September 24, 2015 to Monday, October 5, 2015. In addition, the notice is being abbreviated in order to provide timely notice to the public.***

B21-137, the "Workforce Job Development Grant-Making Reauthorization Act of 2015", would enable the Department of Employment Services to continue to issue grants from funds appropriated to or received by the agency for workforce job development purposes.

B21-206, the "Film DC Economic Incentive Amendment Act of 2015", would amend the Film DC Economic Incentive Act of 2006 to modify the incentives provided to qualified film, television, and entertainment work in the District of Columbia.

Individuals and representatives of organizations who wish to testify at the public hearing are asked to contact Faye Caldwell of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at fcaldwell@dccouncil.us and provide their name(s), address, telephone number, email address and organizational affiliation, if any, by close of business Friday, October 2, 2015. Each witness is requested to bring 20 copies of his/her written

testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. The official record will remain open until close of business Monday, October 19, 2015. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH AND HUMAN SERVICES
COMMITTEE ON THE JUDICIARY
NOTICE OF JOINT PUBLIC HEARING
1350 PENNSYLVANIA AVE., N.W., WASHINGTON, D.C. 20004

COUNCILMEMBER YVETTE M. ALEXANDER, CHAIRPERSON
COMMITTEE ON HEALTH AND HUMAN SERVICES

AND

COUNCILMEMBER KENYAN MCDUFFIE, CHAIRPERSON
COMMITTEE ON THE JUDICIARY

ANNOUNCE A JOINT PUBLIC HEARING ON

BILL 21-257, THE "MEDICAL MARIJUANA CULTIVATION CENTER EXPANSION AMENDMENT ACT OF 2015"

THURSDAY, OCTOBER 8, 2015
11:00 A.M., ROOM 500, JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

Councilmember Yvette M. Alexander, Chairperson of the Committee on Health and Human Services, and Councilmember Kenyan McDuffie, Chairperson of the Committee on the Judiciary, announce a joint public hearing on Bill 21-257, the "Medical Marijuana Cultivation Center Expansion Amendment Act of 2015." The hearing will take place at 11:00 a.m. on Thursday, October 8, 2015 in Room 500 of the John A. Wilson Building.

The purpose of this bill is to allow those that own or lease the real property adjacent to and within the same physical structure as their cultivation center, to expand their facilities into that adjacent real property to increase production. It also permanently increases the number of living plants medical marijuana cultivation centers may possess to 1000.

Those who wish to testify should contact Malcolm Cameron, Legislative Analyst to the Committee on Health and Human Services, at 202-741-0909 or via e-mail at mcameron@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business on Tuesday, October 6, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

For those unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements can be emailed to mcameron@dccouncil.us or mailed to Malcolm Cameron at the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Room 115, Washington, D.C., 20004. The record will close at 5:00 p.m. on Tuesday, October 22, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE ON

The District's Snow Removal Operations Plan for Winter 2015-2016

Friday, October 23, 2015
at 11:00 a.m.
in Room 500 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Friday, October 23, 2015, Councilmember Mary M. Cheh, Chairperson of the Committee on the Transportation and the Environment, will hold a public oversight roundtable on the District's Snow Removal Operations Plan for Winter 2015-2016. The roundtable will begin at 11:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The Department of Public Works has the primary responsibility for the District's snow removal operations. Efficient operations require the participation and coordination of many government agencies and hundreds of employees. The roundtable will examine DPW's readiness for the coming snow season and the agency's ability to coordinate with other entities.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official record. Anyone wishing to testify should contact Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at abenjamin@dccouncil.us. Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring 8 copies of their written testimony and should submit a copy of their testimony electronically to abenjamin@dccouncil.us.

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on November 6, 2015.

Council of the District of Columbia
Committee on Finance and Revenue
Notice of Public Roundtable
John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE

ANNOUNCES A PUBLIC ROUNDATBLE ON:

PR 21-252, the "Commission on the Arts and Humanities Elvi Moore Confirmation Resolution of 2015"
PR 21-253, the "Commission on the Arts and Humanities Stacie Lee Banks Confirmation Resolution of 2015"
PR 21-254, the "Commission on the Arts and Humanities C. Brian Williams Confirmation Resolution of 2015"
PR 21-255, the "Commission on the Arts and Humanities Kim Alfonso Confirmation Resolution of 2015"
PR 21-256, the "Commission on the Arts and Humanities Maria Hall Rooney Confirmation Resolution of 2015"

Thursday, October 1, 2015
10:00 a.m.
Room 120 - John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public roundtable to be held on Thursday, October 1, 2015 at 10:00 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 21-252, the "Commission on the Arts and Humanities Elvi Moore Confirmation Resolution of 2015" as a member of the Commission on Arts and Humanities, replacing Phillippa Hughes, whose term expired June 30, 2013, for a term to end June 30, 2016.

PR 21-253, the "Commission on the Arts and Humanities Stacie Lee Banks Confirmation Resolution of 2015"as a member of the Commission on Arts and Humanities, replacing Lavinia M. Wohlfarth, whose term expired June 30, 2014 for a tem to end June 30, 2017.

PR 21-254, the "Commission on the Arts and Humanities C. Brian Williams Confirmation Resolution of 2015" as a member of Commission on Arts and Humanities, replacing Christopher B. Cowan, whose term expired June 30, 2014, for a term to end June 30, 2017.

PR 21-255, the "Commission on the Arts and Humanities Kim Alfonso Confirmation Resolution of 2015" as member of the Commission on Arts and Humanities, replacing Tendani Mpulubusi, whose term expired June 30, 2014, for a term to end June 30, 2017.

PR 21-256, the "Commission on the Arts and Humanities Maria Hall Rooney Confirmation Resolution of 2015" as a member of the Commission on Arts and Humanities, replacing Danielle M. St Germaine-Gordon, whose term expired June 30, 2014, for a term to end June 30, 2017.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Sarina Loy, Committee Aide at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Wednesday, September 30, 2015. Witnesses should bring 15 copies of their written testimony to the roundtable. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	September 18, 2015
Petition Date:	November 2, 2015
Hearing Date:	November 16, 2015
Protest Hearing:	January 13, 2016

License No.:	ABRA-100376
Licensee:	Columbia Room, LLC
Trade Name:	Columbia Room
License Class:	Retailer's Class "C" Tavern
Address:	1224 9th Street, N.W.
Contact:	Angelica Salame: 240 515-5385

WARD 2 ANC 2F SMD 2F06

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled on January 13, 2016 at 1:30 pm.

NATURE OF OPERATION
New Tavern. Cocktail bar with seasonal cocktails and snacks. Total Occupancy Load is 114. Summer Garden with 40 seats.

HOURS OF OPERATON FOR PREMISES AND SUMMER GARDEN
Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES AND SUMMER GARDEN
Sunday through Thursday 10 am – 2 am, Friday and Saturday 10 am – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	September 18, 2015
Petition Date:	November 2, 2015
Hearing Date:	November 16, 2015
Protest Hearing:	January 13, 2016

License No.:	ABRA-099954
Licensee:	Esencias Panamenas, LLC
Trade Name:	Esencias Panamenas
License Class:	Retailer's Class "C" Restaurant
Address:	3322 Georgia Avenue, N.W.
Contact:	Ariadna Yadira Stamp: 202 688-7250

WARD 1 ANC 1A SMD 1A09

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled on January 13, 2016 at 4:30 pm.

NATURE OF OPERATION
New Restaurant serving Latin/Caribbean food. Entertainment to include Panamanian folklore and dancing with native attire during certain Panamanian holiday observations. Total Occupancy Load is 50. Sidewalk Café with 12 seats.

HOURS OF OPERATON
Sunday and Monday 11 am – 2 am, Wednesday through Saturday 11 am – 2 am, Closed Tuesday

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday and Monday 11 am – 1 am, Wednesday through Saturday 11 am – 1 am

HOURS OF OPERATION OF SIDEWALK CAFE
Sunday and Monday 11 am – 9 pm, Wednesday through Saturday 11 am – 9 pm

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUPTION FOR SIDEWALK CAFE
Sunday and Monday 11 am – 8 pm, Wednesday through Saturday 11 am – 8 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	September 18, 2015
Petition Date:	November 2, 2015
Hearing Date:	November 16, 2015

License No.:	ABRA-099385
Licensee:	J Shoo & Sun A Inc.
Trade Name:	Kenny's Smokehouse
License Class:	Retailer's Class "C" Restaurant
Address:	732 Maryland Avenue, N.E.
Contact:	Kevin Lee: (703) 941-3133

WARD 6 ANC 6C SMD 6C03

Notice is hereby given that this applicant has applied for a substantial change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Request is for Change of Hours to the premises and sidewalk café.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES AND SIDEWALK CAFE
Monday through Thursday 11 am – 9:30 pm, Friday and Saturday 11 am – 10:30 pm, Closed Sunday

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES AND SIDEWALK CAFE
Sunday through Saturday 11 am - 11 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Posting Date: September 11, 2015
Petition Date: October 26, 2015
Hearing Date: November 9, 2015
Protest Date: January 6, 2016

License No.: ABRA-100267
Licensee: Las Placitas Inc.
Trade Name: Las Placitas
License Class: Retailer's Class "C" Restaurant
Address: 1100 8th Street, S.E.
Contact: Isidoro Amaya and Juan Ramon Amaya: 202-957-3652

WARD 6 ANC 6B SMD 6B04

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for 1:30pm on January 6, 2016.

NATURE OF OPERATIONE
New restaurant. Total Occupancy Load of **18. Sidewalk Café with seating for 38. Salvadorian and Mexican food served.

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE /CONSUMPPTION
Sunday through Thursday 10am - 2am, Friday and Saturday 10am - 3am

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON SIDE WALK CAFE
Sunday through Saturday 10am - 11pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	September 18, 2015
Petition Date:	November 2, 2015
Hearing Date:	November 16, 2015
Protest Hearing Date:	January 13, 2016
License No.:	ABRA- 100236
Licensee:	A Little Mouthful, LLC
Trade Name:	Red, White and Basil
License Class:	Retailer's Class "D" Restaurant
Address:	1781 Florida Avenue, N.W.
Contact:	Christopher Lynch 917-620-9330

WARD 1 ANC 1C SMD 1C07

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for January 13, 2016 at 1:30 pm.

NATURE OF OPERATION

A restaurant serving freshly-made pasta as well as beer and wine. Entertainment may include background music and occasional DJ. Total number of seats: 17. Total Occupancy Load: 18. Total number of Sidewalk Cafe seats: 20.

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES AND SIDEWALK CAFE

Sunday through Saturday 11 am – 12 am

HOURS OF ENTERTAINMENT

Sunday through Saturday 6 pm – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	September 18, 2015
Petition Date:	November 2, 2015
Roll Call Hearing Date:	November 16, 2015
Protest Hearing Date:	January 13, 2016
License No.:	ABRA-098845
Licensee:	The Mediterranean Way Co.
Trade Name:	The Mediterranean Way Gourmet Market
License Class:	Retailer's Class "B" (25%)
Address:	1717 Connecticut Avenue, N.W.
Contact:	Nikolaus Adamopoulos: 202-560-5715

WARD 2 ANC 2B SMD 2B01

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for January 13, 2016 at 4:30pm.

NATURE OF OPERATION
New 25% Retailer's Class "B" license.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES
Sunday 10am-8pm, Monday through Saturday 10am-10pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	September 18, 2015
Petition Date:	November 2, 2015
Hearing Date:	November 16, 2015

License No.:	ABRA-097558
Licensee:	Gobind, LLC
Trade Name:	Toscana Cafe
License Class:	Retail Class "DR"
Address:	601 2nd Street, N.E.
Contact:	Maninder Sethi: (202) 525-2693

WARD 6 ANC 6C SMD 6C04

Notice is hereby given that this licensee has applied for a substantial change to his license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date.

LICENSEE REQUESTS THE FOLLOWING SUBSTANTIAL CHANGE TO ITS NATURE OF OPERATION:
Request a Class Change from Class DR license to Class CR license.

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Saturday 11 am – 12 am

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFE
Sunday through Thursday 11 am – 11 pm, Friday & Saturday 11 am – 12 am

BOARD OF ELECTIONS

NOTICE OF RESCHEDULED PUBLIC HEARING
RECEIPT AND INTENT TO REVIEW INITIATIVE MEASURE

The Board of Elections has rescheduled its October 7, 2015, public hearing to consider whether the proposed measure "Public Accountability Safety Standards Act of 2016 for the District of Columbia Government" is a proper subject matter for initiative to take place at its regular meeting on Wednesday, November 4, 2015, at 10:30 a.m., One Judiciary Square, 441 4th Street, N.W., Suite 280N, Washington, DC.

The Board requests that written memoranda be submitted for the record no later than 4:00 p.m., Thursday, October 29, 2015, to the Board of Elections, General Counsel's Office, One Judiciary Square, 441 4th Street, N.W., Suite 270N, Washington, D.C. 20001.

Each individual or representative of an organization who wishes to present testimony at the public hearing is requested to furnish his or her name, address, telephone number, and name of the organization represented (if any) by calling the General Counsel's office at 727-2194 no later than Monday, November 2, 2015, at 4:00 p.m.

The Short Title, Summary Statement and Legislative Text of the proposed initiative read as follows:

SHORT TITLE

Public Accountability Safety Standards Act of 2016
for the District of Columbia Government

SUMMARY STATEMENT

Substance Abuse Test for District of Columbia Candidates & Serving Officials

Substance

Alcohol & Schedule I-IV Controlled Substance

Test

Candidates

Congressional Seats
Council Seats & Chairman
Mayor
Attorney General

- Voluntary Test Passing candidate exempt from signature requirements
- Petition Challengers substance test before filing DCBOEE challenge
- Declared Winners test 48 hours after DCBOEE announcement
- Fail test advance to passing candidate

Serving Officials

Congressional Seats
Attorney General
Agency Chiefs and Directors
Mayor
Council Chairman
Council Members

Public or Legislative Meetings and Hearings
Emergency or Temporary Legislation

LEGISLATIVE TEXT

1. BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA that this Act may be cited as the:

Public Accountability Safety Standards Act of 2016 (aka PASS).

2. This law is to prevent the use of alcohol and Schedule I-IV Control Substances by "Safety Sensitive Personnel who are:

A. Candidates for elected office, in the District of Columbia.

B. Petition Challenger(s) who file against candidates at the District of Columbia Board of Elections and Ethics.

C. Serving Officials

1. Elected Officials of the District of Columbia Government
2. Agency Chiefs or Directors of all departments or agencies of the District of Columbia Government

D. Tier One Support Staff and Hired Independent Contractors

1. Executive Office of the Mayor – Deputy Mayors

2. Office of the Attorney General: Assistant Attorney General of the District of Columbia Government – Tier One Support Staff.

A. Civil or criminal cases when District of Columbia Government as Defendant. One per Hearing or one per month of attorney(s) arguing case. One per each defendant that District of Columbia Government represents in court for duration of trial, weekly or monthly, if any District employee or serving official fails substance test, individual is automatically terminated without benefits.

B. Plaintiff cases when District of Columbia Government as Plaintiff: No test to subject represented or Assistant Attorney General.

3. Office of the Attorney General: Contract Private Consultants or Law Firms

A. Civil or criminal cases when District of Columbia Government as Defendant. One per Hearing or one per month of attorney(s) representing and arguing case. One per each defendant that District of Columbia Government represents in court for
duration of trial, weekly or monthly, if any District employee or serving official fails substance test, individual is automatically terminated without benefits.

B. Plaintiff cases when District of Columbia Government as Plaintiff: No test to subject represented or Assistant Attorney General.

4. Office of the Inspector General:
Tier One Support Staff – Agents, Auditors, Inspectors, Analysts, and Investigators.

A. Unwarranted investigations. Each Investigator and authorizing supervisor)(s) for the duration of one per week substance test. Any person who fails substance shall be automatically terminated without benefits.

B. Warranted, approval of Court only. One substance test of each individual who is a participant of investigating team.

5. Office of the Inspector General – Contract Private Consultants , Contract Investigators and Auditors

A. Unwarranted investigations. Absolute disclosure of names of investigators and person of authority, Each Investigator and person(s) of authority, for the duration, one per week substance test. Any person who fails substance shall be automatically terminated.

B. Warranted, approval of Court only. One substance test of each individual who is a participant of investigating team

6 District of Columbia Parking Enforcement .

A. Unwarranted investigations. Absolute disclosure of names of investigators and person of authority, Each Investigator and person(s) of authority, for the duration, one per week substance test. Any person who fails substance shall be automatically terminated without benefits.

B. Any staff member, independent contractor and/or Government employee who issues District of Columbia parking tickets within authorized or unauthorized hours or after 6 PM shall be required along

with Supervisor who authorizes order past standard work hours, to have a mandatory substance test weekly pending order. Failed substance test: automatic termination of position.

i. PASS does not discriminate or hold any prejudice of any individual's, ethnic origin, sex, sexual preference, religious beliefs, religion, age,financial status or country of origin.

3.0. **Administers of Tests**

1. Defense Intelligence Agency
2. National Security Agency

i. Any identified Administer of tests has the right to add other US Agency(s) or any Departments, military or non military to substitute personnel without congressional approval and oversight, to assist in testing of Candidates, Petition Challenger(S), Serving Officials, Elected or Appointed Agency Chiefs and Directors.

4.0 **Witness of Tests**

i. District of Columbia Narcotics Task Force or District of Columbia Fire EMS

ii. Witness of Tests shall be selected randomly by the Administers of test on the day of notice to any candidate or serving officials.
Witness of test has absolute immunity from termination of Position or Department and from any Department Executive's, Supervisor's or Director's questions and public disclosure when serving.

5.0 **Benefits of PASS for the District of Columbia.**

i. To assure absolute confidence of election(s) and elected or serving officials in the District of Columbia Government.

ii. To install independent budget autonomy request from the U.S. Congress for the daily and yearly operations of the District of Columbia Government.

iii. Approval of the District of Columbia voting authority inside of the House of Representatives (1 vote), Senate (1vote) to participate on behalf of residents of the district of Columbia

iv. Undeniable approval for a chartered commonwealth territory rights renewable every 200 years or non revocable by Congressional approval pending the District of Columbia Mayor City Council and Government does not change or remove key safety regulations or the Public Accountability Safety Standards Law of 2016.

1.0 Substance

Alcohol & Schedule I-IV Controlled Substance.

1.1 **Alcohol** liquor, beer, wine, and other beverages containing alcohol, other than mouth wash.

1.2 **Schedule I-IV Controlled Substance**. Title 21 US Code Chapter 13 Sec. 812.

(a) Establishment
There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970, and shall be updated and republished on an annual basis thereafter.

(b) Placement on schedules; findings required
Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on October 27, 1970, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

(1) Schedule I.—
(A) The drug or other substance has a high potential for abuse.
(B) The drug or other substance has no currently accepted medical use in treatment in the United States.
(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) Schedule II.—
(A) The drug or other substance has a high potential for abuse.
(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.
(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) Schedule III.—
(A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.
(B) The drug or other substance has a currently accepted medical use in treatment in the United States.
(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) Schedule IV.—
(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.
(B) The drug or other substance has a currently accepted medical use in treatment in the United States.
(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) Schedule V.—
(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.
(B) The drug or other substance has a currently accepted medical use in treatment in the United States.
(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.
(c) Initial schedules of controlled substances
Schedules I, II, III, IV, and V shall, unless and until amended [1] pursuant to section 811 of this title, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:
Schedule I
(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:
(1) Acetylmethadol.
(2) Allylprodine.
(3) Alphacetylmathadol. [2]
(4) Alphameprodine.
(5) Alphamethadol.
(6) Benzethidine.
(7) Betacetylmethadol.
(8) Betameprodine.
(9) Betamethadol.
(10) Betaprodine.
(11) Clonitazene.
(12) Dextromoramide.
(13) Dextrorphan.
(14) Diampromide.
(15) Diethylthiambutene.
(16) Dimenoxadol.
(17) Dimepheptanol.

(18) Dimethylthiambutene.
(19) Dioxaphetyl butyrate.
(20) Dipipanone.
(21) Ethylmethylthiambutene.
(22) Etonitazene.
(23) Etoxeridine.
(24) Furethidine.
(25) Hydroxypethidine.
(26) Ketobemidone.
(27) Levomoramide.
(28) Levophenacylmorphan.
(29) Morpheridine.
(30) Noracymethadol.
(31) Norlevorphanol.
(32) Normethadone.
(33) Norpipanone.
(34) Phenadoxone.
(35) Phenampromide.
(36) Phenomorphan.
(37) Phenoperidine.
(38) Piritramide.
(39) Proheptazine.
(40) Properidine.
(41) Racemoramide.
(42) Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine.
(2) Acetyldihydrocodeine.
(3) Benzylmorphine.
(4) Codeine methylbromide.
(5) Codeine-N-Oxide.
(6) Cyprenorphine.
(7) Desomorphine.
(8) Dihydromorphine.
(9) Etorphine.
(10) Heroin.
(11) Hydromorphinol.
(12) Methyldesorphine.
(13) Methylhydromorphine.

(14) Morphine methylbromide.
(15) Morphine methylsulfonate.
(16) Morphine-N-Oxide.
(17) Myrophine.
(18) Nicocodeine.
(19) Nicomorphine.
(20) Normorphine.
(21) Pholcodine.
(22) Thebacon.
(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) 3,4-methylenedioxy amphetamine.
(2) 5-methoxy-3,4-methylenedioxy amphetamine.
(3) 3,4,5-trimethoxy amphetamine.
(4) Bufotenine.
(5) Diethyltryptamine.
(6) Dimethyltryptamine.
(7) 4-methyl-2,5-dimethoxyamphetamine.
(8) Ibogaine.
(9) Lysergic acid diethylamide.
(10) Marihuana.
(11) Mescaline.
(12) Peyote.
(13) N-ethyl-3-piperidyl benzilate.
(14) N-methyl-3-piperidyl benzilate.
(15) Psilocybin.
(16) Psilocyn.
(17) Tetrahydrocannabinols.
(18) 4-methylmethcathinone (Mephedrone).
(19) 3,4-methylenedioxypyrovalerone (MDPV).
(20) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E).
(21) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D).
(22) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C).
(23) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C–I).
(24) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–2).
(25) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–4).
(26) 2-(2,5-Dimethoxyphenyl)ethanamine (2C–H).
(27) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C–N).
(28) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C–P).

(d)
(1) Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
(2) In paragraph (1):
(A) The term "cannabimimetic agents" means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:
(i) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent.
(ii) 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.
(iii) 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.
(iv) 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.
(v) 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.
(B) Such term includes—
(i) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP–47,497);
(ii) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP–47,497 C8-homolog);
(iii) 1-pentyl-3-(1-naphthoyl)indole (JWH–018 and AM678);
(iv) 1-butyl-3-(1-naphthoyl)indole (JWH–073);
(v) 1-hexyl-3-(1-naphthoyl)indole (JWH–019);
(vi) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200);
(vii) 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH–250);
(viii) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH–081);
(ix) 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH–122);
(x) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH–398);
(xi) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201);
(xii) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694);
(xiii) 1-pentyl-3-[(4-methoxy)-benzoyl]indole (SR–19 and RCS–4);
(xiv) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR–18 and RCS–8); and
(xv) 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH–203). Schedule II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium.
(3) Opium poppy and poppy straw.
(4) coca [3] leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.
(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:
(1) Alphaprodine.
(2) Anileridine.
(3) Bezitramide.
(4) Dihydrocodeine.
(5) Diphenoxylate.
(6) Fentanyl.
(7) Isomethadone.
(8) Levomethorphan.
(9) Levorphanol.
(10) Metazocine.
(11) Methadone.
(12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane.
(13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
(14) Pethidine.
(15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
(16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
(17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
(18) Phenazocine.
(19) Piminodine.
(20) Racemethorphan.
(21) Racemorphan.

(c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers. Schedule III

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

(2) Phenmetrazine and its salts.

(3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

(4) Methylphenidate.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.

(2) Chorhexadol.

(3) Glutethimide.

(4) Lysergic acid.

(5) Lysergic acid amide.

(6) Methyprylon.

(7) Phencyclidine.

(8) Sulfondiethylmethane.

(9) Sulfonethylmethane.

(10) Sulfonmethane.

(c) Nalorphine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
(e) Anabolic steroids. Schedule IV
(1) Barbital.
(2) Chloral betaine.
(3) Chloral hydrate.
(4) Ethchlorvynol.
(5) Ethinamate.
(6) Methohexital.
(7) Meprobamate.
(8) Methylphenobarbital.
(9) Paraldehyde.
(10) Petrichloral.
(11) Phenobarbital.

2.0 Test

2.1 **Administers of Test**

2.11 Defense Intelligence Agency or any Division of Agency that has immunity from Congressional oversight and authority to test:

A. Candidates
B. Agency Chief or Directors
C. Petition Challenger(s)
D. Tier One Support Staff – District of Columbia Office of the Attorney General, District of Columbia Office of the Inspector General, Executive Office of the Mayor.
E. Tier One Support Contractors – Private investigators and Security Guards, Private Law Firms or individual Attorneys at Law.

2.12 National Security Administration or any Division of Agency that has immunity from Congressional oversight and authority to test:

A. Elected Serving Officials
B. Voluntary Test – Candidate Positions or temporary replacement of elected officials or serving appointed officials
C. Temporary Replacements of Elected Officials or Serving Officials

2.13 (Test Witness) DC Metropolitan Police Narcotics Division or DC Fire EMS

2.20 **Random**: Subject being tested will be notified between 8:00 AM and 8:30 AM of the day of test. Test to be administered between the hours 10:00AM to Council hearing ending at 441 4th St. NW, 1350 Pennsylvania Avenue NW, any DC leased, DC owned facilities within the borders of the United States or foreign countries.

2.21 **Procedure:** Portable Test Kit and/or breath analyzer, hair, blood, oral swab or urine sample.

2.3 **Alcohol Testing:** Breathalyzer not to exceed .08% **.**

2.4 **Test Refusal:** Subject actions will be reported to the press, media, radio, television, internet and public, same or next day by press release to all major newspapers and broadcast stations by the District of Columbia Attorney General or Counsel Chairman.

A. Candidate – Automatic disqualification, with prejudice.
B. Petition Challenger(s) – Automatic disqualification with prejudice
C. Serving officials - Automatic termination without benefits.
D. Emergency or Temporary Legislation - Automatic termination without benefits.
E, Public or Legislation Meetings and Hearings - Automatic termination without benefits.
F. Declared Veto - Automatic termination without benefits.

2.5 **Public or Legislative Meetings and Hearings.** Subject, who is voting or nonvoting, can be excused to be tested having had prior written notice on the day of the test.

2.6 Emergencies **or Temporary Legislation.** All subjects will be tested without notice. Non Passing alcohol and substance results – vote shall not be counted, and official to be automatically terminated.

2.7 **Declared Veto.** Subject tested 24 hours after declaration of veto at location of order – veto can be stricken or removed

2.8 **Schedule I-IV Controlled Substance** One test only.

3.0 Candidates

3.1 **Congressional Seats**

3.11 United States Shadow Representative Article 1 Sec. 2 U.S. Constitution
3.12 Delegate to the House of Representatives DC Official Code 1-401,
3.13 United States Shadow Senator Article 1 Sec. 3 U.S. Constitution

3.2 **Mayor of the District of Columbia** DC Official Code 1-204.21
3.3 **Council Chairman** DC Official Code §§ 1-204.02 and 1.204.03
3.4 **Council Seats**:

3.41 Council Member At Large DC Official Code 1-204.02
3.42 Council Member At Large DC Official Code 1-204.02
3.43 Council Member At Large DC Official Code 1-204.02
3.44 Council Member At Large DC Official Code 1-204.02

3.5 **Ward Council Members**

3.51 Council Member - Ward 1 DC Official Code 1-204.02
3.52 Council Member - Ward 2 DC Official Code 1-204.02
3.53 Council Member - Ward 3 DC Official Code 1-204.02
3.54 Council Member - Ward 4 DC Official Code 1-204.02
3.56 Council Member - Ward 5 DC Official Code 1-204.02
3.57 Council Member - Ward 6 DC Official Code 1-204.02
3.58 Council Member - Ward 7 DC Official Code 1-204.02
3.59 Council Member - Ward 8 DC Official Code 1-204.02

3.6 **Attorney General of the District of Columbia** DC Official Code 1-201.83.

3.7 **Voluntary Test**: Optional procedure for candidate who seeks office to be tested for Alcohol and Substances pending after declaration of position sought, one test same day declaring candidacy.
Candidate must pass alcohol and substance test in order to have automatic ballot access and be exempt from petition signature requirements.

3.8 **Petition Challenger(s)** Chapter 10 Title 3 DCMR 1006 :

i. Any individual, company, law firm, profit or nonprofit foundation, PAC, political party, special interest group, trade union, activist group, community organization, unions and lobbyists, whom challenges petitions filed by any candidate seeking any position shall take a mandatory alcohol and drug test, day of filing petition to DCBOEE Petition challenger must take one alcohol and substance test and pass as an individual and shall have a right to transfer challenge to law firm, private consultant, any registered business of the District of Columbia. All staff members, employees, executive directors or owners of entity, must take and pass one alcohol and substance test in order for the challenger's transfer to be accepted by DCBOEE.

ii. Results by test administers, submitted to DCBOEE and District of Columbia Court of Appeals within 48 hours of transfer.

iii. Failure of test is automatic dismissal with prejudice, by DCBOEE, from any future petition challenges.

iv. If entity is a business or any other organization it must be registered by the District of Columbia Consumer and Regulatory and Affairs, one hear before challenge.

3.9 **Declared Winners**:

Any Primary, General or Special Election with affiliation of all political parties, no party and write-ins must after declared winner must take a test 24 hours after DCBOEE announcement of winning. If candidate winner fails to show within 24 hours, that candidate will be disqualified automatically from the winners list and the test shall advance to the next competing candidate of the same party for Primary Election.

i. For General Election: the winner is the next candidate of opposing party , no party or write-in by largest to smallest voting percentage.

ii. For Special Election: Declared winning candidate must test within 24 hours of DCBOEE notice. If fail alcohol and substance test, the test will advance to next competing candidate until passing results by a candidate.

3.10 **Fail test**:

A. Primary Election: Advance to competing and passing candidate of party affiliation. One test only per candidate, 24 hour notice, failure to appear for test results in automatic disqualification.

B. General Election: Advance to opposite political party, or no-political party, write-in with highest to lowest percentage competing for position. One test, only per candidate, within 24 hours.

C. Special Election: Advance to any candidate passing the test regardless of party or voting percentage margin. One test per candidate, 24 hours after notice. Failure to appear results in automatic disqualification.

3.11 **Pre Medical Condition.** Any candidate with prescription for use of a schedule I-IV shall be off of prescribed drug before competing or winning any office sought before declaration of candidacy to DCBOEE.

4.0 Random Tests – Serving Officials

(Elected to Office)

Definition: Per year by position to be tested at offices of Federal buildings, District of Columbia, owned or leased facilities and residences, if conducting meetings on behalf of the

District of Columbia, not limited to any state in the United States of America or international territories..

4.1 **Congressional Seats**

4.11 **United States Shadow Representative** (2 per year)
4.12 **Delegate to the US House of Representatives** (3 per year)
4.13 **United States Shadow Senator** (2 per year)
4.14 **United States Shadow Senator** (2 per year)

4.15 **Mayor for the District of Columbia**: (2 per year), additional test to include: submitting yearly budget request to Congress, declaring curfews, declaring marshal law, declaring vetoes or unwarranted internal investigations of citizens or employees.

4.16 **Council Chairman** (8 per year)

4.17 **Council Chairman Pro-Tempore** (6 per year)

4.20 **Council Seats**:

4.21 **Ward Council Members At Large**

4.22 **Council Member At Large (**4 per year)
4.23 **Council Member At Large (**4 per year)
4.24 **Council Member At Large (**4 per year)
4.25 **Council Member At Large (**4 per year)

4.3 **Ward Council Members**

4.31 **Council Member - Ward 1 (**3 per year)
4.32 **Council Member - Ward 2 (**3 per year)
4.33 **Council Member - Ward 3 (**3 per year)
4.34 **Council Member - Ward 4 (**3 per year)
4.35 **Council Member - Ward 5 (**3 per year)
4.36 **Council Member - Ward 6 (**3 per year)
4.37 **Council Member - Ward 7 (**3 per year)
4.38 **Council Member - Ward 8 (**3 per year)

4.4 **Attorney General for the District of Columbia** (10 per year)

4.5 **Failed Test** Failed automatic termination of individual without benefits.

4.51 Breathalyzer not to exceed .08%. May fail one time.

4.52 Schedule I-IV Controlled Substance. May not fail one test.

4.6 **Administrative Medical Prescription Leave**: U.S. Licensed physician diagnosis for use to cure a disease or condition. Marijuana or Schedule I-IV Control Substances.

4.61 **Ward Council Members** (Wards 1 through 8)

Option 1. Administrative Medical Leave for 1 to 30 days. Chief of Staff has voting and signing authority by passing alcohol and substance test. If Chief of Staff does not pass test he or she will not be eligible for the position. The position shall be filled by the ANC individual of the Ward in a random lottery drawing by the elected Attorney General of the Council in a lottery of ANC individuals whom volunteer their name to be considered for Temporary Council Member position. Temporary Council Member must be able to pass an alcohol and substance test at the time of lottery.

Option 2. Governing Authority Leave up to 160 days maximum Chief of Staff or ANC of Ward, has voting and signing authority until medical examination determines Council Member fit to return before end of election term.

Option 3. Complete resignation of position with all benefits in place, if condition is non recoverable and Special Election to take place within 90 days.

4.62 **Council Chairman**

Option 1 Administrative Medical Leave for 1 to 30 days. Chief of Staff has voting and signing authority if he or she passes alcohol and substance test. If Chief of Staff does not pass test the Council Chairman pro tempore will assume the position, pending passing of the alcohol and substance tests. If Council Chairman pro tempore does not pass test he or she will not be eligible for the position and a special election for the position will take place for position within 90 to 120 days. Council Chairman is eligible to retain benefits and seek office next election cycle.

4.63 **Council Chairman Pro-Tempore**

Option 1 Administrative Medical Leave for 1 to 30 days. Chief of Staff has voting and signing authority after passing of alcohol and substance test. If Chief of Staff does not pass test he or she will not be eligible for the position and a special election for the position will take place for position within 90 to 120 days.

Council Chairman Pro-Tempore can retain benefits and seek office next election cycle.

4.64 **Council Members at Large**

Option 1 Administrative Medical Leave for 1 to 30 days. Chief of Staff has voting and signing authority after passing of alcohol and substance test. If Chief of Staff

does not pass test he or she will not be eligible for the position and a special election for the position will take place for position within 90 to 120 days.

Council Member at Large can retain benefits and seek office next election cycle.

4.65 **Attorney General** can retain benefits and seek office next election cycle under rules of passing alcohol and substance tests.

4.66 **Mayor** can retain benefits and seek office next election cycle under rules of passing alcohol and substance tests.

4.67 **United States Shadow Representative** can retain benefits and seek office next election cycle under rules of passing alcohol and substance tests.

4.68 **Delegate to the US House of Representatives** can retain benefits and seek office next election cycle under rules of passing alcohol and substance tests.

4.69 **United States Shadow Senator** can retain benefits and seek office next election cycle under rules of passing alcohol and substance tests.

5.0 Random Tests – Serving Officials

(Agency Chiefs and Directors Appointed to Office)

Definition: Per year by position to be tested at office, Federal offices, District owned or leased facility and residences if conducting meetings on behalf of the District of Columbia, not limited to any state in the United States of America or international territories.

5.1 **Agency Chiefs and Directors**

5.11 **District of Columbia Executive Office of the Mayor**

A**.** Position of Deputy Mayors (4 per year)

5.12 **District of Columbia Government Assistant Attorney General**

A. **Independent contract attorneys or Law firm** (8 per year or 1 per Court Hearing)
B. **District of Columbia Government Assistant Attorney Generals** (6 per year).

5.13 **District of Columbia Parking Enforcement**

A. Director (8 per year)

B. Staff Members (8 per year)

5.14 **District of Columbia Metropolitan Police Department**

A. Chief (10 per year)

5.15 **District of Columbia Government Homeland Security**

A. Director and Chief (10 per year)

5.16 **District of Columbia Inspector General**

A. Inspector General (10 per year).

5.17 **District of Columbia Fire Department**

A. Chief (10 per year)

5.18 **District of Columbia Department of Transportation**

A. Director (8 per year)

5.19 **District of Columbia Department of Public Works**

A. Director (4 per year)

5.20 **District of Columbia Office of the Chief Financial Officer**

A. Chief Financial Officer. (10 per year)

5.21 **District of Columbia Department of Health**

A. Director (6 per year)

5.22 **District of Columbia** Department of Consumer and Regulatory Affairs

A. Director (2 per year)

5.23 **District of Columbia Public Schools**

A. Superintendent (6 per year) or Chancellor (6 per year)

B. Chief of Staff (4 per year)

5.24 **Office of Small and Local Business Development**

A**. Director** (8 per year)

5.25 **District of Columbia Water**

A**.** General Manager (8 per year)
B. General Counsel (6 per year)

5.26 **District of Columbia Public Service Commission**

A. Chairperson (Chairman) (4 per year)
B. Commissioners (4 per year)
C. General Counsel (6 per year)

5.27 **District of Columbia Board of Elections and Ethics**

A. Chairman (8 per year)
B. Board Members (4 per year)
C. General Counsel (6 per year)

5.28 All other Agency Chiefs and Directors (Appointed or Non Appointed) (2 per year)

5.40 **Random**: Subject being tested will be notified between at 9:00 AM and 9:30 AM of the day of test. Test to be administered between the hours 11:00AM to 6 PM.

5.41 **Benefit Option** Any elected and serving officials of the District of Columbia who resigns up to 1 hour before alcohol and substance test shall have rights and access to full benefits..

5.42 **Failed Test: A**utomatic termination of individual.

5.42.1 Breathalyzer not to exceed .08%. May fail one test.

5.42.2 Schedule I-IV Controlled Substances. May not fail one test.

5.42.3 Medical Prescription: Marijuana and Schedule I-IV substances by licensed U.S. physician .

Option 1. Administrative Leave for up to 30 days. Must have Licensed U.S. physician prescription), with Deputy or Agency Assistant replacing Chief or Director until further notice if passes alcohol and substance test.

6.0 Lottery Drawings for Temporary Positions

(1-30 Days)

Ward Member: Any ANC regardless of political affiliation can submit a sealed envelope with their name and address to a lottery box where an envelope will be drawn by the Attorney General of the District of Columbia and Chairman, witnessed by Chairman of the Council.

A. Sealed envelope selected from lottery box by Attorney General of the District of Columbia (Elected) will be opened and the name of the ANC will be spoken aloud.

B. A substance test will be given to the selected ANC, on the spot by an Administer of the test. If subject fails test, proceed with next drawing until ANC passes test.

7.0 Public Disclosure - Press Release

Report results to DCBOEE, broadcast media (television , AM and FM radio). and print media (newspapers -local and out of territory), Internet web sites, (social media and others). Spokesperson: Attorney General – Elected.

7.1 **Candidates:**

A. Voluntary – only if pass substance

B. Primary – Declared winning candidate(s) only from each political party or all independent candidates (No Party) who have ballot access.

C. General Elections – Declared winner(s) only press release of test results, pass or fail.

D. Special Elections – Declared winner(s) only of position.

E. Test Refusal – Press release of refusal.

F. Resign Before Test – Press release of resignation.

G. Petition Challenge – Press release of test results of Challenger(s): individual, private consultant, law firm, political party, trade and union organizations, etc..

7.2 **Serving officials**: All elected positions and agency Chiefs and Directors.

A. Fail Test: Press Release.

B. Resignation Before Test: Discretion of official.

C. Administrative Prescription Medical Leave: Press Release.

D. Refusal of Test: Press Release.

8.0 Act of Legislative Text

This act shall take effect after a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Self-Government and Government Reorganization Act (Home Rule Act), approved December 24, 1971 (87 Stat. 813; D.C. Official Code §1-206.02(c)(a).

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 302(14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2012 Repl.)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 77 (Marriage and Family Therapy) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to extend licensure qualification to accredited online degree programs.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 8, 2015 at 62 DCR 5751. No comments were received. The rules were adopted as final on August 5, 2015 and will be effective upon publication of the notice in the *D.C. Register*.

Chapter 77, MARRIAGE AND FAMILY THERAPY, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Section 7702, EDUCATIONAL REQUIREMENTS, is amended as follows:

Section 7702.2 is amended to read as follows:

7202.2 For the purposes of Subsection 7702.1, qualifying degrees shall consist of at least sixty (60) semester hours or ninety (90) quarter credits in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE).

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2012 Repl.)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 91 (Graduate Professional Counselor) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the amendments is to define the term "independent practice", and to notify graduate professional counselors that maintaining an independent practice is prohibited during their period of licensure. In addition, this rulemaking notifies licensees, students, and graduates that practice professional counseling that they are required to abide by the most recent edition of the Code of Ethics as published by the American Counseling Association.

These amendments were published as Notice of Proposed Rulemaking in the *D.C. Register* on July 10, 2015 at 62 DCR 009488. No comments were received and no changes were made to the rulemaking. The rules were adopted as final on August 21, 2015 and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 91, GRADUATE PROFESSIONAL COUNSELOR, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Section 9105, SUPERVISED EXPERIENCE REQUIREMENTS, is amended as follows:

Add a new Subsection 9105.9 to read as follows:

9105.9 Only a licensed professional counselor may engage in independent practice. A graduate professional counselor shall not engage in independent practice. For purposes of the section "independent practice" means:

(a) Rendering counseling services on his or her own responsibility, free of the administrative and professional control of an employer or clinical supervisor;

(b) Directly collecting fees from a client, or his or her representative, as the payor, for services rendered where the counselor is the payee; or

(c) Maintaining an office or office space at his or her own expense with advertising to the public that conveys information or the idea that the counselor is not affiliated with a licensed health professional who provides supervision.

Section 9111, STANDARDS OF CONDUCT, is amended as follows:

Add a new Subsection 9111.48 to read as follows:

9111.48 A licensee, student or graduate practicing professional counseling pursuant to this chapter shall adhere to the standards set forth in the most recent edition of the Code of Ethics as published by the American Counseling Association.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

Wildlife Protection

The Director of the Department of Energy and Environment (Department), in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq*. (2013 Repl.)), the Wildlife Protection Act of 2010, effective March 8, 2011 (D.C. Law 18-289; D.C. Official Code §§ 8-2201 *et seq*. (2013 Repl.)), Mayor's Order 2014-123, dated May 27, 2014, and Mayor's Order 2015-191, dated July 23, 2015, hereby gives notice of proposed rulemaking to amend Chapter 15 (Fish and Wildlife) of Title 19 (Amusements, Parks, and Recreation) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from publication of this notice in the *D.C. Register*.

The purpose of this rulemaking is to license individuals and register companies performing wildlife control activities, to create qualifications and conditions for licensure and registration, to set restrictions on the capture, handling, and transport of wildlife, to set restrictions on euthanasia of wildlife, to establish control requirements for specified species, to require the compilation of service records and annual reporting, to create standards for suspension of licensure and registration, and to establish fees for licensure. The rules also clarify that the definition of wildlife excludes Norway rats, roof rats, house mice, and moles, as well as fish.

The licensing of wildlife control operators and the registration of wildlife control service providers performing services in the District would be in line with the requirements of neighboring states. Many of the wildlife control operators and wildlife control service providers offering services in the District come from Maryland or Virginia. Both states require wildlife control operators to be licensed.

Table of Contents

Chapter 15, FISH AND WILDLIFE, of Title 19 DCMR, AMUSEMENTS, PARKS, AND RECREATION, is amended to add new Sections 1570 to 1579, as follows:

1570 WILDLIFE PROTECTION: WILDLIFE CONTROL OPERATOR LICENSING AND FEES

1570.1 Except in accordance with § 1560, no person shall engage in wildlife control without a license from the Department of Energy and Environment (Department).

1570.2 To obtain a wildlife control operator license, an applicant shall:

(a) Be at least 18 years of age;

(b) Certify that he or she has not been convicted of an offense involving wildlife or animal cruelty within the previous ten (10) years;

(c) Complete a wildlife control operator training class approved or administered by the Department;

(d) Pass an examination approved by or administered by the Department, with a score of no less than eighty percent (80%) correct responses;

(e) Provide proof of employment with a wildlife control services provider registered by the Department under § 1571 below;

(f) Present a valid District or state-issued ID; and

(g) Pay a fee in the amount of $50.00.

1570.3 The written examination shall include the following topics:

(a) Animal life cycles;

(b) Wildlife control methods and best practices;

(c) Human health and safety issues; and

(d) Laws and regulations pertaining to wildlife in the District of Columbia.

1570.4 If an applicant fails to pass the examination, he or she shall:

(a) Wait ten (10) business days before making another attempt; and

(b) Not take the examination more than three (3) times in a calendar year.

1570.5 A wildlife control operator license shall not be transferable.

1570.6 A wildlife control operator shall be in possession of the license while engaging in activities authorized by the license, and it shall be made available for inspection when requested by the Department.

1570.7 A wildlife control operator license shall be renewed every two years, with payment of a $50.00 fee.

1570.8 It is the responsibility of the operator to initiate any license renewal by submitting a renewal application to the Department at least thirty (30) days before the expiration date on his or her license.

1570.9 The wildlife control operator has up to thirty (30) days after the expiration of his or her license to submit a renewal application. A $25.00 late fee will be assessed in addition to the renewal fees.

1570.10 If a license has been expired for more than 30 days, the wildlife control operator shall be subject to applicable penalties for operating without a license.

1570.11 If a license has been expired for more than one year, the wildlife control operator shall submit a new application pursuant to § 1570.2.

1570.12 A wildlife control operator shall perform wildlife control activities in accordance with §§ 1570 through 1579 and any terms or conditions in the license.

1570.13 A wildlife control operator shall perform wildlife control activities only for the species designated by the license.

1570.14 A wildlife control operator shall notify the Department within ten (10) business days of any changes to the information in his or her license.

1570.15 A wildlife control operator must comply with all federal and District laws, including those that apply to threatened or endangered species.

1570.16 Nothing in this subsection shall be construed to prohibit owners of private property from taking action to protect their property or person in compliance with § 1560.2.

1571 WILDLIFE PROTECTION: WILDLIFE CONTROL SERVICES PROVIDER REGISTRATION

1571.1 A business shall not engage in providing wildlife control services in the District unless the business is registered by the Department as a wildlife control services provider and uses the service of a licensed wildlife control operator to control wildlife.

1571.2 A self-employed wildlife control operator must register as a wildlife control

services provider.

1571.3 A wildlife control services provider registration is non-transferable and continues until the registration is withdrawn by the wildlife control services provider or suspended or revoked pursuant to § 1578.

1571.4 A wildlife control services provider does not have to take an examination administered by the Department to register with the Department.

1571.5 To register, the wildlife control services provider shall submit to the Department:

(a) Documentation showing that the entity has a valid District of Columbia basic business license;

(b) The business name, address, e-mail address, phone number, and a contact name; and

(c) Documentation of liability insurance, that shall be kept in full force and effect as long as the wildlife control services provider is engaged in wildlife control, for at least:

(1) $1,000,000 for each occurrence;

(2) $1,000,000 for personal injury; and

(3) $2,000,000 in the aggregate.

1571.6 The wildlife control services provider shall notify the Department within ten (10) business days of any changes to the information in his or her registration.

1572 WILDLIFE PROTECTION: NOTICE TO CLIENTS

1572.1 Before undertaking any wildlife control measures, a wildlife control services provider shall provide to the client, in writing, the following:

(a) An assessment of the wildlife problem, including possible causes;

(b) The methods and practices that may be used to resolve the wildlife problem, clearly specifying possible lethal and nonlethal means;

(c) The agreed-upon disposition of the animal;

(d) The estimated charge; and

(e) Where applicable, the methods and practices which the client may employ to limit future problems of a similar nature.

1573 WILDLIFE PROTECTION: RECORD KEEPING AND REPORTING

1573.1 A wildlife control operator shall maintain records of all wildlife control services, documenting the following information at each service call:

(a) Client's name and address;

(b) Date of services;

(c) Nature of the complaint;

(d) Methods employed to alleviate problem;

(e) Number and species of wildlife handled;

(f) Method and location of disposition of wildlife; and

(g) Name of the licensed wildlife control operator who performed the service.

1573.2 On or before January 15 of each year, a wildlife control services provider shall submit an accurate summary of activities of the preceding calendar year to the Department for publication online. The summary shall contain the following information:

(a) Name, phone number, and employment address of the wildlife control operator;

(b) Total number of complaints;

(c) Number and kinds of wildlife handled and their disposition;

(d) Number of wildlife euthanized and method of euthanasia employed; and

(e) Time period covered.

1573.3 A wildlife control services provider shall keep all records required in §§ 1573.1 and 1573.2 for three (3) years, and shall make the records available for inspection by the Department, upon request.

1573.4 Wildlife control services providers shall report to the Department any potential outbreak or widespread occurrence of suspected disease.

1574 WILDLIFE PROTECTION: CONTROL OF SPECIFIC SPECIES

1574.1 A wildlife control operator and wildlife control services provider shall recommend and employ non-lethal means in preference to lethal means for the control of problem wildlife.

1574.2 The following wildlife shall be controlled using the methods outlined in this section and § 1576:

(a) Birds

Common Name	Scientific Name
Budgerigar	*Melopsittacus undulatus*
European starling	*Sturnus vulgaris*
Graylag goose	*Anser anser*
House sparrow	*Passer domesticus*
Mute swan	*Cygnus olor*
Rock pigeon	*Columba livia*

(b) Mammals

Common Name	Scientific Name
Rodents	
Deer mouse	*Peromyscus maniculatus*
Gray squirrel	*Sciurus carolinensis*
Groundhog	*Marmota monax*
White-footed mouse	*Peromyscus leucopus*
Small Mammals	
Raccoon	*Procyon lotor*
Red fox	*Vulpes vulpes*
Large Mammals	
Black bear	*Ursus americanus*
Coyote	*Canis latrans*
White-tailed deer	*Odocoileus virginianus*

(c) Reptiles

Common Name	Scientific Name
Black rat snake	*Elaphe obsoleta obsoleta*

1574.3 Any species identified as a Species of Greatest Conservation Need (SGCN) as listed in the District's Wildlife Action Plan, which may be found on the Department website, may not be euthanized, killed, relocated, distressed, displaced, or otherwise harmed without written permission from the Department.

1574.4 The Department may approve the request to control a particular SGCN animal for the following reasons:

(a) If the animal is causing damage to personal property or threatening public health or safety;

(b) If the animal is sick or injured; or

(c) Additional reasons on a case-by-case basis.

1574.5 A migratory bird shall be controlled only in accordance with the federal Migratory Bird Treaty Act (16 U.S.C. §§ 703-712) and its implementing regulations, and as follows:

(a) A nest with eggs or young may not be moved, relocated, destroyed, or altered in any way without first obtaining a federal permit.

(b) A nest with no eggs or young may be removed from structures such as boats, docks, and construction equipment, or relocated without a federal permit.

1574.6 Bats are SGCN species and may only be controlled with written permission and guidance from the Department, including time restrictions for non-lethal exclusion of bat colonies, and decontamination protocols to prevent the spread of White-nose Syndrome.

1574.7 Amphibians and turtles shall not be controlled by wildlife control operators.

1574.8 To transport wildlife out of the District, the wildlife control operator or wildlife control provider must first obtain written permission from the receiving jurisdiction and then request and receive written permission from the Department.

1574.9 To transport wildlife into the District, the wildlife control operator or wildlife control provider must first obtain written permission from the Department and then obtain written permission from the jurisdiction the wildlife is leaving.

1575 WILDLIFE PROTECTION: FERAL DOGS AND CATS

1575.1 When no other control methods have been proven to be adequate, a wildlife control services provider may control feral dogs and cats.

1575.2 The control of feral cats by a wildlife control services provider shall be consistent with the District's policy in favor of trap, neuter, or spay, and return or adoption for controlling feral cats.

1575.3 The wildlife control services provider shall:

(a) Minimize the use of euthanasia when medical treatment or adoption is possible; and

(b) Make a good faith effort to provide for adoption of trapped, tamable kittens.

1576 WILDLIFE PROTECTION: ACCEPTABLE METHODS OF WILDLIFE CONTROL

1576.1 Live traps and exclusion devices may be used to control wildlife.

1576.2 Nets may be used to capture live birds and bats, but wildlife control operators must obtain a federal permit to use mist nets and rocket nets.

1576.3 If permitted to use a mist net, the net must to be checked at least once every hour.

1576.4 All live traps and exclusion devices shall be labeled with the name, address, and phone number of the wildlife control services provider.

1576.5 A trap shall be set in a manner designed to catch the target wildlife and in a manner likely to avoid capture of and harm to non-target wildlife.

1576.6 A trap which is set shall be checked at least once every twenty-four (24) hours, or more frequently if environmental conditions require it to prevent harm to any animal.

1576.7 Remote trap technology may be used to check traps.

1576.8 If the remote trap does not send a report or electronic signal to the wildlife control operator or wildlife control services provider for a period of twenty-four (24) hours, the wildlife control operator or services provider shall immediately check the trap.

1576.9 Captured non-target wildlife that is healthy and does not pose an unreasonable risk to the health and safety of persons or domestic animals shall be:

(a) Released immediately at the site of capture; or

(b) Relocated to a suitable location where nuisance problems are unlikely to continue, with the written permission of that property owner.

1576.10 Captured non-target wildlife that is believed to be sick, injured, orphaned, or poses an unreasonable risk to people or domestic animals, or is otherwise unfit for release on site shall be:

(a) Transferred to the District’s Animal Care and Control Agency;

(b) Transferred to a licensed wildlife rehabilitator in the District; or

(c) Euthanized in accordance with this section, if no other options are feasible.

1576.11 Captured target wildlife shall be:

(a) Released at the site of capture;

(b) With the written permission of that property owner relocated to a safe location where nuisance problems are unlikely to occur;

(c) Surrendered to the District's Animal Care and Control Agency for evaluation and assessment, if the animal is exhibiting symptoms of disease;

(d) Transferred to a licensed wildlife rehabilitator in the District, if the animal appears to be sick, injured, or abandoned; or

(e) If no other options are feasible, euthanized in accordance with this section.

1576.12 A wildlife control services provider shall make every reasonable effort to keep dependent young with their parents by:

(a) Using humane eviction or displacement and reuniting strategies; and

(b) Not knowingly abandoning dependent young wildlife in a structure.

1576.13 In the case of an attempt to reunite dependent young, a wildlife control services provider may hold wildlife in captivity at a safe and secure location within the District for up to seventy-two (72) hours once authorized in writing by the Department.

1576.14 A wildlife services provider shall capture, handle, and transport captured wildlife in a manner that prevents or limits unnecessary discomfort, behavioral stress, or physical harm to the animal, including providing protections against weather extremes.

1576.15 Captured wildlife shall be kept in covered, secure safe containers in such a way as to:

(a) Minimize stress to the animal and its exposure to the elements by covering the trap or vehicle with appropriate material;

(b) Ensure that the covering is of such material that the animal has adequate air supply and to prevent overheating; and

(c) Minimize potential hazards to the general public.

1576.16 Wildlife, or parts thereof, shall not be sold, bartered, traded, given to another person, or retained for any purpose, except that an animal may be given to a wildlife rehabilitator, veterinarian, or animal control officer within the District for rehabilitation or euthanasia.

1576.17 If relocation of healthy wildlife or rehabilitation of sick, injured, or orphaned wildlife is not feasible, a wildlife control services provider shall use the available method of euthanasia that is the quickest, least stressful, and least painful to the animal under the circumstances.

1576.18 Euthanasia is acceptable only when using methods that conform to the Report of the American Veterinary Medical Association Panel on Euthanasia: 2013 Edition for Free-Ranging Wildlife and Domestic Animals (AVMA Report).

1576.19 On a case-by-case basis, the Department may approve a method of euthanasia, not published in the AVMA Report, which utilizes advancements in technology that minimizes risks to animal welfare, personnel safety, and the environment for a particular set of circumstances.

1577 WILDLIFE PROTECTION: PROHIBITED METHODS OF CONTROL

1577.1 The Department may prohibit the use of toxicants on wildlife, where it is determined that the wildlife can be reasonably controlled using less harmful methods.

1577.2 The use of any toxicant to control pigeons, European starlings, or house sparrows shall be prohibited.

1577.3 The use of sticky or glue traps to control any wildlife is prohibited.

1577.4 Leg-hold and other body-gripping traps, body-crushing traps, snares, or harpoon-type traps shall not be used to control any wildlife.

1577.5 Wildlife shall not be kept in captivity longer than thirty-six (36) hours unless specifically authorized in writing by the Department.

1578 WILDLIFE PROTECTION: DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION OF A LICENSE OR REGISTRATION

1578.1 The Department may deny, suspend, modify, or revoke a license or registration issued pursuant to §§ 1570 or 1571, if applicant, registrant, or license holder has:

(a) Threatened the public health, safety, or welfare, or the environment or engaged in cruelty to animals;

(b) Been convicted of an offense that directly involved wildlife or cruelty to animals within the previous ten (10) years;

(c) Violated or threatened violation of law, and the rules set forth in §§ 1570 to 1577, or the terms and conditions of the license or registration;

(d) Been convicted of an offense for cruelty to animals, pursuant to D.C. Official Code §§ 22-1001 *et seq.*;

(e) Engaged in fraudulent business practices;

(f) Failed to comply with one or more federal or District wildlife statutes or regulations;

(g) Misrepresented facts relating to wildlife or wildlife control to a client, customer, or the Department;

(h) Made a false statement or misrepresentation material to the issuance, modification, or renewal of a license or registration;

(i) Submitted a false or fraudulent record or report;

(j) Had its authorization to do business in the District of Columbia revoked or suspended;

(k) Failed to keep an active insurance policy as required by § 1571.5; or

(l) Had an error in the terms and conditions of the registration or license that needs to be corrected.

1578.2 The notice of proposed denial, suspension, modification, or revocation shall be in writing and shall include the following:

(a) The name and address of the applicant or the holder of the license or registration;

(b) The legal and factual basis for the proposed action, including citations to the specific statutory or regulatory provision(s);

(c) The effective date and duration, if any; and

(d) How and when the applicant or license or registration holder may request an administrative hearing and the consequences of failure to appeal.

1578.3 To appeal the denial, suspension, modification, or revocation, the applicant or license or holder may request an administrative hearing before the District of

Columbia Office of Administrative Hearings in accordance with the Rules of Practice and Procedure set forth in Title 1, Chapter 28, of the D.C. Municipal Regulations.

1578.44 The applicant or license or registration holder shall have fifteen (15) calendar days from the date of service of the notice to deny, suspend, modify, or revoke the license or registration, or twenty (20) days if served by mail, to request a hearing to show cause why the license or registration should not be denied, suspended, modified, or revoked.

1578.5 The Department may serve a notice of denial, suspension, modification, or revocation in addition to any other administrative or judicial penalty, sanction, or remedy authorized by law.

1578.6 The Department shall not reissue a license or registration to any person whose certification or license has been revoked until after at least one year following the revocation.

1578.7 The Department shall not reissue a license or registration to any person whose license or registration has been revoked until the applicant has submitted a new application, and complies with the requirements in §§ 1570.2 and 1571.

1579 WILDLIFE PROTECTION: ENFORCEMENT

1579.1 The Mayor may bring an action in the Superior Court of the District of Columbia to enjoin the violation or threatened violation of §§ 1570-1577.

Section 1599, DEFINITIONS, is amended to add the following definitions:

1599 DEFINITIONS

1599.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Animal Care and Control Agency - the agency established by Section 3 of the Animal Control Act of 1979, effective October 18, 1979 (D.C. Law 3-30; D.C. Official Code §§ 8-1802 *et seq.* (2012 Repl.)).

Commensal rodent - Norway rat, roof rat, and house mouse. A rat or mouse found within a structure or proximally located at the external base of a structure may be treated as a commensal rodent for purposes of §§ 1570 to 1579.

Complaint - a service call received by a wildlife control operator or services provider for wildlife control services.

Department - the Department of Energy and Environment.

Director - the Director of the Department of Energy and Environment.

District - the District of Columbia.

Exclusion device - a product used to prevent wildlife from entering an area.

Licensed wildlife rehabilitator - wildlife rehabilitator licensed in any state or the District or a person or agent credentialed by the District of Columbia or any State to treat sick, orphaned, or injured wildlife within the District.

Live trap - a trap that is intended to capture an animal without killing.

Migratory bird - a bird protected by the Migratory Bird Treaty Act, 16 U.S.C. §§ 703–712, as defined in the Code of Federal Regulations for the U.S. Fish and Wildlife Service in 50 C.F.R. § 10.12 and listed in 50 C.F.R. § 10.13.

Mist nest - a virtually invisible nylon mesh net suspended by two poles, often used by biologist to capture birds and bats for banding and other research.

Person - an individual, partnership, corporation, trust, association, firm, joint stock company, organization, commission, or any other private entity.

Potential outbreak - an increase in the number or frequency of cases of infectious disease, or a change in disease eruption patterns, that could reasonably lead to or signify an outbreak or epidemic.

Remote trap technology - real-time trap monitoring with devices that are fail safe and that self-report.

Rocket net - a type of net that uses a projection system to capture a large number of animals at once.

Species of Greatest Conservation Need (SGCN) - an animal species that is listed in the District's Wildlife Action Plan as a species in need of conservation through targeted management actions, based on a set of criteria that are detailed in the Wildlife Action Plan. This includes animal species whose populations are imperiled, vulnerable or declining, or have their habitat at risk.

Target wildlife - the specific species of wildlife that a wildlife control operator or wildlife control service provider intended to capture.

Threatened or endangered species - species on the list established pursuant to the Endangered Species Act, 16 U.S.C. §§ 1531-1534, and set forth in the Code of Federal Regulations at 50 C.F.R. Part 17.

Widespread outbreak - occurrence of an infectious disease over a wide geographic area or affecting a large proportion of the population, also known as an epidemic.

Wildlife - includes any free-roaming wild animal, but shall not include domestic animals, commensal rodents, invertebrates, fish, and moles.

Wildlife control - to harass, repel, evict, exclude, possess, transport, liberate, reunite, rehome, take, euthanize, kill, handle, catch, capture, release, surrender, displace, or relocate wildlife.

Wildlife control operator - person who is licensed to perform wildlife control services by the Department, but shall not include the Animal Care and Control Agency or a property manager as defined by D.C. Official Code § 47-2853.141.

Wildlife control services provider - the operator of a business which involves the charging of a fee for services in wildlife control.

All persons desiring to comment on the proposed amendments to the District of Columbia's Fish and Wildlife regulations should file comments in writing not later than thirty (30) days after the publication of this notice in the *D.C. Register*. All comments should be labeled "Review of the Wildlife Protection Act Regulations" and filed with the Department of Energy and Environment, Fisheries and Wildlife Division, 1200 First Street, N.E., 5th Floor, Washington D.C. 20002, Attention: Wildlife Protection Act Regulations Comments, or by e-mail to *wildlifeprotection.comments@dc.gov*. All comments will be treated as public documents and will be made available for public viewing on the Department's website at *www.doee.dc.gov*. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. If a comment is sent by e-mail, the e-mail address will automatically be captured and included as part of the comment that is placed in the public record and made available on the Department's website.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), pursuant to the authority set forth in Sections 6, 7, 8(b) and (d), 11, and 12, of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-305, 50-306, 50-307(b) and (d), 50-310, and 50-311 (2014 Repl. & 2015 Supp.)), hereby gives notice of its intent to adopt amendments to Chapter 1 (District of Columbia Taxicab Commission: Rules of Organization) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

The proposed rulemaking would to amend Chapter 1 to update the organizational rules and procedures of the Commission and its panels, including the requirements for voting, types of meetings, and notices.

The Commission also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice of proposed rulemaking in the *D.C. Register*. Directions for submitting comments may be found at the end of this notice.

Chapter 1, DISTRICT OF COLUMBIA TAXICAB COMMISSION: RULES OR ORGANIZATION, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:

Section 100, OFFICERS, is amended to read as follows:

100 OFFICERS

100.1 The officers of the Commission shall be the Chairperson and the Secretary.

100.2 The Chairperson shall perform the following duties:

(a) Preside at regular, special, and emergency meetings of the Commission or designate another Commissioner to serve in that capacity;

(b) Serve as the spokesperson for the Commission on all matters, or designate another Commissioner to serve in that capacity;

(c) Issue and sign notices and correspondence in accordance with § 109;

(d) Appoint committees and panels, and their chairpersons, as needed;

(e) Serve as the Chief Administrative Officer of the Commission and as the Commission's personnel authority; and

(f) Perform other duties of the Commission as the Commission may delegate.

100.3 The Secretary shall perform the following duties:

(a) Oversee the electronic recording of Commission and panel meetings and the preparation of detailed minutes where electronic recording is not feasible in accordance with § 108.3;

(b) Call the Roll at Commission meetings:

(c) Announce that a quorum is or is not present;

(d) Maintain a record of the attendance of Commissioners at Commission and panel meetings; and

(e) Perform such ministerial and other duties assigned by the Commission.

Section 101, APPOINTMENT OF THE VICE-CHAIRPERSON AND SECRETARY, is amended to read as follows:

101 APPOINTMENT OF THE SECRETARY AND ETHICS COUNSELOR

101.1 The Secretary to the Commission shall be an employee of the Office of Taxicabs designated by his or her position title in an administrative issuance issued by the Chairperson. Contact information for the Secretary shall be posted on the Commission's website.

101.2 The General Counsel to the Commission shall serve as the Ethics Counselor.

Section 102, MEETINGS, is amended to read as follows:

102.1 The Commission shall hold regular meetings on the second Wednesday of January, March, May, July, September and November at 10:00 a.m., at the official offices of the Commission, or at any other place as the Chairperson may designate. The notice of regular meetings shall be provided in accordance with § 109.

102.2 The Commission shall hold work sessions, as necessary, to engage in briefings and to consider matters before the Commission on the first Tuesday of February, April, June, September, October and December at the official offices of the Commission, or at any other place as the Chairperson may designate. The Commission may hold additional work sessions to carry out its statutory authority.

102.3 The Commission, its panels, and committees shall not meet on holidays, during the last two (2) weeks in December, or on snow emergency days as declared by the Mayor.

102.4 The Chairperson may call a special meeting of the Commission or a Panel at the direction of the Commission or its Panel. The notice shall be provided in accordance with § 109 and shall state the matters to be considered. No other matter may be considered at the special meeting except with the consent of all members of the Commission or the Panel present.

102.5 The Chairperson may call an emergency meeting of the Commission as needed to address an urgent matter. The notice of an emergency meeting shall be provided in accordance with § 109.

102.6 By affirmative vote of a majority of Commissioners in office, the Commission may schedule or hold a closed executive session to discuss personnel, litigation, or other matters of a private or confidential nature. No official action may be taken in an executive session, and no records shall be kept of the session other than a record of the vote to schedule or hold the session.

Subsections 102.8 and 102.9 are deleted.

Section 103, CONDUCT OF MEETINGS, is amended as follows:

Subsection 103.6 is amended to read as follows:

103.6 Representatives of governmental agencies involved in taxicab administration, including, but not limited to, the Metropolitan Police Department, the Office of Taxicabs, the Washington Metropolitan Area Transit Commission, and the Commissioner of the D.C. Department of Insurance, Securities, and Banking may participate in the meetings of the Commission.

Section 104, QUORUM, is amended to read as follows:

Subsection 104.1 is amended to read as follows:

104.1 A majority of the Commissioners in office shall constitute a quorum for taking official action or votes at all meetings of the Commission. A meeting may commence for the consideration of matters not requiring official action or a vote when a majority of Commissioners in office are not present.

Section 105, CONFLICTS OF INTEREST AND APPOINTMENT OF ETHICS COUNSELOR, is amended as to read as follows:

105 CONFLICTS OF INTEREST

105.1 Any Commissioner, including the Chairperson, or panel member who, in the discharge of his or her official duties on the Commission, would be required to take an action or make a decision that would affect directly or indirectly his or her financial interest, as defined by § 223 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.23 (2014 Repl.)) or the financial interest of a member of his or her household or a business with which he or she is associated, or must take an official action on a matter as to which he or she has a conflict of interest created by a personal, family, or client interest, shall disclose this information in writing to the Chairperson.

105.2 The Chairperson shall excuse the Commissioner or panel member from votes, deliberations, and other action on the matter if the Ethics Counselor has determined that a conflict of interest exists or the Commissioner or panel member has requested to be excused due to a conflict of interest.

105.3 Any information disclosed under this section shall be included in the written record of the proceedings.

Subsection 105.4 is deleted.

Section 106, VOTES, is amended as follows:

Subsection 106.1 is amended to read as follows:

106.1 Action shall be taken by majority vote of the Commissioners voting unless contrary in these rules or other applicable law.

Subsection 106.3 is amended to read as follows:

106.3 The Commission may, upon motion of any Commissioner, reconsider a vote taken at the same meeting at which the vote to reconsider is taken or, if otherwise in order, at the next meeting.

Section 107, ORDER OF BUSINESS OF MEETINGS, is amended to as follows:

Subsection 107.1 is amended to read as follows:

107.1 The order of business at meetings shall be as follows unless otherwise modified by the Chairperson with prior notice as provided in section § 109 or by majority vote of Commissioners voting:

(a) Call to Order;

(b) Moment of silence;

(c) Determination of a quorum;

(d) Commission communication;

(e) Government communication:

(1) The Mayor and Executive Branch;

(2) Council and the United States Congress; and

(3) Other governmental agencies and departments;

(f) Public communications including petitions;

(g) Reports from the following:

(1) The Chairperson;

(2) The General Counsel;

(3) The Office of Taxicabs;

(4) The Metropolitan Police Department;

(5) The Commissioner of the District of Columbia Department of Insurance, Securities and Banking;

(6) The Washington Metropolitan Area Transit Commission; and

(7) Others;

(h) Consent Calendar:

(1) Hearing and approval of a panel report; and

(2) Other Action Items;

(i) Non-Consent Calendar:

(1) Hearing and approval of a panel report; and

(2) Other Action Items;

(j) Scheduling of public hearings;

(k) Consideration of matters in executive session as authorized by law; and

(l) Adjournment.

107.2 A consent calendar may be presented by the Chairperson at the beginning of a meeting. Items may be removed from the Consent Calendar at the request of any Commissioner. Items not removed may be adopted by general consent without debate. Removed items may be taken up either immediately after the consent Calendar, placed on the Non-Consent Calendar or placed later on the agenda at the discretion of the Commission.

Section 108, RECORDS OF MEETINGS, is amended as follows:

Subsection 108.1 is amended to read as follows:

108.1 The Secretary shall cause the creation of a formal record of the official proceedings of Commission meetings by electronic recording except as provided by § 108.3. All written documents and materials of the Commission shall be maintained by the Secretary as the official record of the Commission.

A new Subsection 108.3 is added to read as follows:

108.3 The Secretary shall prepare detailed minutes of a Commission or panel meeting if electronic recordation is not feasible.

Section 109, NOTICES AND CORRESPONDENCE, is amended to read as follows:

109 NOTICES, CORRESPONDENCES AND RECORDS

109.1 The Chairperson shall sign or designate a person to sign the following:

(a) All notices to Commissioners of regular, special, and emergency meetings;

(b) All notices and correspondence delineating proposed and final actions of the Commission; and

(c) All appointments of committees and panels where appointments are within the powers of the Chairperson.

109.2 Notices of regular and special Commission meetings shall be posted not fewer than seven (7) days in advance of the meeting.

109.3 Notice of regular and special Commission meetings shall be made by:

(a) Posting on the DCTC website;

(b) Posting in the Office; and

(c) Posting in the *D.C. Register,* as timely as practicable.

109.4 Notice of an emergency Commission meeting shall be provided at the same time notification of the date and time of the meeting is given to the Commission. Notice under this subsection shall be provided by any of the methods in § 109.3.

109.5 The public records of the Commission may be examined in the offices of the Commission during normal office hours. An individual may make an appointment with the Commission to listen to an electronically recorded meeting of the Commission or its panels by contacting the Secretary of the Commission.

109.3 The Chairperson may have published in any newspaper of general circulation notice of any Commission meeting.

Section 110, OFFICIAL OFFICES OF THE COMMISSION AND OFFICE HOURS, is amended as follows:

Subsection 110.1 is amended to read as follows:

110.1 The official offices of the Commission and Office of Taxicabs shall be 2235 Shannon Place, S.E., Suite 3001, Washington, D.C. 20020.

Subsection 110.3 is deleted.

Section 111, POLICY AND PROGRAMS, is amended as follows:

Subsection 111.1 is amended to read as follows:

111.1 The Commission as a whole, when convened in regular, special or emergency sessions, shall, consistent with law, consider and adopt Commission policy, programs, and objectives.

Section 112, FREEDOM OF INFORMATION ACT REQUESTS, is amended as follows:

Subsection 112.1 is amended to read as follows:

112.1 The Public Information Officer is designated as the Freedom of Information Act Officer for the Commission.

Copies of this proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting the Secretary to the Commission, District of Columbia Taxicab Commission, 2235 Shannon Place, S.E., Suite 3001, Washington, D.C. 20020. All persons desiring to file comments on the proposed rulemaking action should submit written comments via e-mail to dctc@dc.gov or by mail to the DC Taxicab Commission, 2235 Shannon Place, S.E., Suite 3001, Washington, DC 20020, Attn: Secretary to the Commission, no later than thirty (30) days after the publication of this notice in the *D.C. Register*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-209
September 9, 2015

SUBJECT: Delegation — Authority to the Director of the Department of General Services to Execute Documents Pursuant to the Soccer Stadium Development Amendment Act of 2014, as amended by the Soccer Stadium Development Technical Clarification Emergency Amendment Act of 2015, and the Closing of the Public Streets adjacent to Squares 603S, 605, 607, 661, 661N, and 665, and in U.S. Reservations 243 and 244, S.O. 13-14605, Emergency Act of 2015, and Clarification of Delegation of Authority to the Deputy Mayor for Planning and Economic Development

ORIGINATION AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by sections 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, Pub. L. 93-198; 87 Stat. 790, D.C. Official Code, §§ 1-204.22(6) and (11) (2014 Repl.), it is hereby **ORDERED** that:

1. The Director of the Department of General Services ("**DGS**") is delegated the authority vested in the Mayor pursuant to sections 103(a)(2), 103(b), 103(d), and 103(e) of the Soccer Stadium Development Amendment Act of 2014, effective March 11, 2015, D.C. Law 20-233, D.C. Official Code § 10-1651.01 *et seq.*, as amended by the Soccer Stadium Development Technical Clarification Emergency Amendment Act of 2015, effective May 8, 2015, D.C. Act 21-59, 62 DCR 5962 and any substantially similar successor or related consequent legislation (the "**Soccer Legislation**"; such sections of the Soccer Legislation, the "**Delegated Land Assemblage Matters**"), which authority shall include the authority to execute all documents necessary to effectuate the Delegated Land Assemblage Matters, including, but not limited to, easements, amendments, consent letters, and estoppels. The Director of DGS is further delegated the Mayor's authority with respect to the execution and implementation of the amended and restated ground lease described in section 104 of the Soccer Legislation (the "**Ground Lease**") and all documents necessary to effectuate the Ground Lease, including, but not limited to, the No Relocation Agreement described in the Ground Lease, lease terminations, easements, amendments, consent letters, estoppels and subordination, non-disturbance and attornment agreements.

2. The Director of DGS is delegated the authority vested in the Mayor pursuant to section 3 of the Closing of Public Streets adjacent to Squares 603S, 605, 607,

661, 661N, and 665 and in Reservations 243 and 244, S.O. 13-14605, Emergency Act of 2015, effective August 11, 2015, D.C. Law 21-0150, and any substantially similar successor or related consequent legislation ("**Street and Alley Closing Legislation**") to enter into (a) easement agreements and covenants to accomplish the street and alley closings set forth in section 2 of the Street and Alley Closing Legislation; (b) utility relocation agreements required by the Amended and Restated Development Agreement between the District and DC Stadium, LLC, approved by the Council of the District of Columbia on June 30, 2015, for the development of a soccer stadium at Buzzard Point (the "**Development Agreement**"); and (c) all other documents necessary to effectuate the street and alley closings and the utility relocations, including, but not limited to, easements, amendments, certificates and consent letters.

3. The Director of DGS is delegated the Mayor's authority with respect to the implementation of Sections 4.1, 5.2, 5.3, 5.4, 5.5, 6.1, and 6.2 of the Development Agreement and with respect to the execution and implementation of all documents necessary to effectuate such Sections of the Development Agreement, including, but not limited to, demolition contracts, environmental remediation contracts and utility relocation contracts.

4. The authority delegated by the Mayor to the Director of DGS herein may be further delegated to subordinates under the personnel authority of the Director of DGS.

5. Rescissions:

   a. Mayor's Order 2015-172, dated June 25, 2015, is hereby rescinded.

6. Reference is made to that certain Mayor's Order 2015-173, dated June 25, 2015, regarding the delegation of authority to the Deputy Mayor for Planning and Economic Development ("**DMPED**") to enter into and implement the Development Agreement (the "**DMPED Mayor's Order**"). For purposes of clarification, this Mayor's Order and the DMPED Mayor's Order are intended to be read together. Pursuant to this Mayor's Order, the Director of DGS is delegated specific authority with respect to the matters set forth above, including specific matters under the Development Agreement. The authority with respect to the remaining matters under the Development Agreement have been, and continue to be, delegated to DMPED under the DMPED Mayor's Order. For the avoidance of any ambiguity, other than the specific authority delegated to the Director of DGS above, DMPED is delegated the Mayor's authority with respect to the implementation of the Development Agreement and all documents necessary to effectuate the Development Agreement and the District's obligations thereunder.

7. **EFFECTIVE DATE:** This Order shall become effective immediately.

MURIEL BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF BEHAVIORIAL HEALTH

NOTICE

The Acting Director of the Department of Behavioral Health (DBH), pursuant to the authority set forth in sections 5113, 5115, 5117, 5118 and 5119 of the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; D.C. Official Code §§ 7-1141.02, 7-1141.04, 7-1141.06, 7-1141.07 and 7-1141.08)(2013 Supp.), hereby gives notice that effective September 18, 2015, DBH will accept new certification applications for: 1) currently certified Substance Use Disorder (SUD) providers to be certified under the recently-published Title 22A, D.C. Municipal Regulation, Chapter 63, "Certification Standards for Substance Use Disorder Treatment and Recovery Providers," 2) currently certified Mental Health Rehabilitation Services (MHRS) providers under Title 22A, D.C. Municipal Regulation, Chapter 34 to be certified under the new Chapter 63, and 3) currently certified SUD providers to be certified under Title 22A, D.C. Municipal Regulation, Chapter 34 (MHRS). DBH will accept the certification applications until further notice.

The moratorium on processing applications for other MHRS certifications, effective August 18, 2012, will remain in effect. The moratorium on processing applications for other new substance use disorder programs and facilities, effective May 2, 2014, will also remain in effect. Applications for other MHRS or substance use disorder services not covered in this Notice will be returned to the applicant and will not be reviewed or processed by DBH.

The Department of Behavioral Health Establishment Act of 2013 authorizes DBH to "plan, develop, coordinate, and monitor comprehensive and integrated behavioral health systems of care for adults and for children, youth, and their families in the District, so as to maximize utilization of behavioral health services and behavioral health supports and to assure that services for priority populations identified in the Department's annual plan are funded within the Department's appropriations or authorizations by Congress and are available." DBH has identified a need for current SUD providers to obtain certification in accordance with the new Chapter 63 regulations. In addition, DBH is seeking certification applications from existing SUD providers who want to provide MHRS services and from existing MHRS providers who want to provide SUD services. DBH's goal is to increase access to quality integrated behavioral health services throughout the District of Columbia.

All questions regarding this Notice should be directed to Atiya Frame-Shamblee, Deputy Director of Accountability, DBH, at 64 New York Ave. NE, 3rd floor, Washington D.C. 20002; or Atiya.Frame@dc.gov; or (202) 673-2245.

BRIYA PUBLIC CHARTER SCHOOL
BRIDGES PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

INSURANCE

Briya Public Charter School and Bridges Public Charter School, through the Mamie D. Lee LLC partnership, are seeking competitive proposals for insurance for a public charter school facility project. For a copy of the RFP, please email bkollar@programmanagers.com. All proposals must be submitted by 12:00 noon on Friday, September 25, 2015.

EAGLE ACADEMY PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

EAGLE ACADEMY PCS, in accordance with section 2204(c)(XV)(A) of the District of Columbia School Reform Act of 1995, hereby solicits proposals to provide:

- Architectural Services
- Assessment and instructional data support and services
- Business insurance
- Classroom furniture, fixtures, and equipment
- Computer hardware and software
- Construction/General Contractor services
- Curriculum materials
- Employee medical benefits
- Financial audit service
- Food & Beverage Suppliers
- General Maintenance & Repairs
- Janitorial supplies
- Kitchen & Cafeteria Supplies:
    - Bread Supplier
    - Cafeteria Disposable Products Supplier
    - Kitchen Small Ware Supplier
    - Milk & Dairy Supplier
    - Whole Food Distributer
    - Food & Beverage Supplier

- Landscaping
- Legal services
- Office furniture, fixtures, and equipment
- Office supplies
- Payroll services
- Physical Therapy Services
- Printing and duplication services
- Professional development and consulting services
- Security services
- Snow Removal
- Special education services
- Student data management systems
- Student transportation services
- Waste management services

Please email bids@eagleacademypcs.org for more details about requirements.
Bids are DUE BY Friday September 25, 2015 at 5pm.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FUNDING AVAILABILITY (NOFA)

FISCAL YEAR 2016

PRE-KINDERGARTEN ENHANCEMENT AND EXPANSION FUNDING

Application Release Date: September 25, 2015

The Office of the State Superintendent of Education (OSSE), Division of Early Learning, hereby provides notice of its intent to allocate Pre-K Enhancement and Expansion funding. The allocations will be made subject to submission of applications from eligible community based organizations[1] pursuant to the Pre-k Enhancement and Expansion Amendment Act of 2008, (the "Act"), effective July 18, 2008 (D.C. Law 17-202; D.C. Official Code §38-271.01 *et seq.*) and implementing regulations. The purpose of this allocation is distribute funding, per student, as appropriate, in an amount not to exceed the uniform per student funding formula ("UPSFF") pursuant to section 2401 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321-107; D.C Official Code § 38-1804.01) to CBOs providing pre-K education services that meet the eligibility requirements and the high quality standards set forth in section 201 of the Act (D.C. Code § 38-272.01). The UPSFF rate for Fiscal Year 2016 is $12,719 for 3 year olds and $12,340 for 4 year olds. In order to receive funding, eligible CBOs must submit an application. OSSE will review applications and approve them in accordance with the Act and implementing regulations, which OSSE intends to adopt, governing Pre-k Enhancement and Expansion funding.

Eligibility: Subject to available funding, the allocation of the Pre-K Enhancement and Expansion funding will not be done through a competitive process. To receive and maintain an allocation of Pre-K Enhancement and Expansion funding, a CBO providing pre-K education services must submit an application to OSSE demonstrating that the CBO:

(1) has a Gold designation under OSSE's *Going for the Gold* Tiered Rate Reimbursement System;
(2) is meeting and maintaining each of the high-quality standards defined in section 201 of the Act (D.C. Code § 38-272.01) and implementing regulations, which OSSE intends to adopt, governing Pre-k Enhancement and Expansion funding;
(3) is meeting and maintaining the following eligibility requirements in accordance with the Act and implementing regulations that OSSE intends to adopt, governing Pre-k Enhancement and Expansion funding.

All interested applicants shall attend the mandatory pre-application conference on September 25, 2015 from 12:00 pm until 2:00 pm on the 3rd floor Grand Hall at 810 First Street NE Washington DC.

[1] "Community-based organization" or "CBO" means a Head Start or early childhood education program operated by a non-profit, for-profit or faith-based organization, or organization that participates in local or federally-funded early childhood programs, including those receiving child care subsidy payments.

The application will be available on Electronic Grants Management System (EGMS) for all FY15 Pre-K Enhancement Grantees on September 25, 2015.

The application and all supporting documents will be available for all other applicants on September 25, 2015 during the mandatory pre-application conference or by contacting Mahlet Getachew at mahlet.getachew@dc.gov.

For additional information, please contact:

Mahlet Getachew, Education Research Analyst
Office of the State Superintendent of Education, Division of Early Learning
810 First Street, NE – 9th Floor, Washington, DC 20002
mahlet.getachew@dc.gov
Phone: 202-727-0545

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FUNDING AVAILABILITY

National School Lunch Program FY2016 Equipment Assistance Grant

Request for Application Release Date: October 5, 2015

The Agriculture Appropriations Act of 2015 authorized grants to the Office of the State Superintendent of Education (OSSE), Wellness & Nutrition Services (WNS), for providing equipment assistance to Institutions participating in the National School Lunch Program (NSLP). The District of Columbia has been selected to receive funding in the amount of $55,570.

These funds will be available through a competitive grant process. Priority will be given to high need schools where 50% or more of the student population are eligible to receive free or reduced-price meals. Priority will also be given to schools that did not receive a previous NSLP Equipment Assistance Grant award under the American Recovery and Reinvestment Act of 2009 and the FY2010, FY2013 and FY2014 Agriculture Appropriations Acts.

These funds will make a significant investment in meeting the unmet need allowing the purchase of capital (>$5,000) equipment helpful to serve healthier meals, meet the new nutritional standards with emphasis on more fresh fruits and vegetables in school meals, improve food safety and expand accessibility to food services.

Focus of School Food Authority Grants
In order to make the most effective use of these grant funds, equipment requests must address at least one of the following focus areas:

- Equipment that lends itself to improving the quality of school food service meals that meet the dietary guidelines (e.g., purchasing an equipment alternative to a deep fryer or steam ovens that improve quality of prepared fresh or fresh-frozen vegetables)
- Equipment that improves the safety of food served in the school meal programs (e.g., cold/hot holding bags/equipment, dish washing equipment, refrigeration, milk coolers, freezers, blast chillers, etc.)
- Equipment that improves the overall energy efficiency of the school food service operations (e.g. purchase of an energy-efficient walk in freezer replacing an outdated, energy-demanding freezer)
- Equipment that allows sponsors to support expanded participation in a school meal program (e.g., equipment for serving meals in a non-traditional setting or to better utilize cafeteria space)
- Equipment that aides in strategies for adopting smarter lunchrooms (e.g. lunchroom changes that appeals to student population; highlighting convenience, healthy choices, and supporting menu changes to healthier options)

To receive more information or for a copy of this RFA, please contact:

Lindsey Palmer
Office of the State Superintendent of Education
810 First Street, NE, 4th Floor
Washington, D.C. 20002
Telephone: (202) 724-7861
Email: Lindsey.Palmer@dc.gov

The RFA and applications are also available on the www.grants.osse.dc.gov.

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCY

The District of Columbia Board of Elections hereby gives notice that there is a vacancy in one (1) Advisory Neighborhood Commission office, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 7B07

Petition Circulation Period: **Monday, Sept. 21, 2015 thru Tuesday, October 13, 2015**
Petition Challenge Period**: Friday, October 16, 2015 thru Thursday, Oct. 22, 2015**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

D.C. Board of Elections
441 - 4th Street, NW, Room 250N
Washington, DC 20001

For more information, the public may call **727-2525**.

DEPARTMENT OF ENERGY AND ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permit #6209-R2 to the Smithsonian Institution to operate an existing 230 kWe emergency generator set with a 357 HP natural gas fired engine at the National Zoological Park, Elephant House, located at 3001 Connecticut Avenue NW, Washington DC. The contact person for the facility is Enos Scragg, Facilities Zone Manager, at (202) 633-1566.

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a public hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after October 19, 2015 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF ENERGY AND ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue Permit #7014 and Permit #7015 to MedStar National Rehabilitation Hospital to operate two (2) Cleaver Brooks 5.230 MMBtu per hour natural gas/No. 2 fuel oil boilers, located at 102 Irving Street NW, Washington, DC. The contact person for the facility is Leo Garner, Director of Facilities/Safety Officer, at (202)877-1050.

Boiler to be Permitted

Equipment Location	Address	Boiler Size	Boiler Serial Number	Permit No.
MedStar National Rehabilitation Hospital	102 Irving Street NW Washington, DC	5.230 MMBtu/hr	L-78868	7014
MedStar National Rehabilitation Hospital	102 Irving Street NW Washington, DC	5.230 MMBtu/hr	L-78869	7015

The proposed emission limits are as follows:

a. Each of the boilers (identified as Boiler #1and Boiler #2) shall not emit pollutants in excess of those specified in the following table [20 DCMR 201]:

Pollutant	Short-Term Limit (Natural Gas) (lb/hr)	Short-Term Limit (No. 2 Fuel Oil) (lb/hr)
Carbon Monoxide (CO)	0.43	0.19
Oxides of Nitrogen (NO_x)	0.51	0.75
Total Particulate Matter (PM Total)*	0.039	0.12
Sulfur Dioxide (SO_2)	0.003	0.008

*PM Total includes both filterable and condensable fractions.

b. Visible emissions shall not be emitted into the outdoor atmosphere from the boilers, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]

c. Particulate matter emissions from each of the boilers shall not be greater than 0.12 pounds per million BTU. [20 DCMR 600.1].

d. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated maximum emissions from each of the boilers are as follows:

Pollutant	**Maximum Annual Emissions Using Natural Gas Only (tons/yr)**	**Maximum Annual Emissions Using No. 2 Fuel Oil Only (tons/yr)**
Carbon Monoxide (CO)	1.88	0.83
Oxides of Nitrogen (NO_x)	2.23	3.28
Total Particulate Matter (PM Total)	0.17	0.53
Volatile Organic Compounds (VOCs)	0.12	0.06
Sulfur Dioxide (SO_2)	0.013	0.03

The applications to operate the boilers and the draft permit and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after October 19, 2015 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF ENERGY AND ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue Permit #7016 to MedStar National Rehabilitation Hospital to operate one 625 kWe diesel -fired emergency generator set with a 900 hp engine, located at 102 Irving Street NW, Washington, DC. The contact person for the facility is Leo Garner, Director of Facility/Safety Officer, at (202)877-1050.

Emergency Generator to be Permitted

Equipment Location	Address	Generator (Engine) Size	Generator Serial Number	Permit No.
MedStar National Rehabilitation Hospital	102 Irving Street NW Washington, DC	625 kWe (900 hp)	PH-3149227	7016

The proposed emission limits are as follows:

a. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].

b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the generator engine are as follows:

Pollutant	Maximum Annual Emissions (tons/yr)
Carbon Monoxide (CO)	1.24
Oxides of Nitrogen (NO_x)	5.4
Total Particulate Matter (PM Total)	0.16
Volatile Organic Compounds (VOCs)	0.14
Sulfur Dioxide (SO_2)	0.00273

The application to operate the generator set and the draft permit and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after October 19, 2015 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF ENERGY AND ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue Permit #7017 to MedStar National Rehabilitation Hospital to operate one Godwin emergency water pump with a 115 hp John Deere diesel-fired engine, located at 102 Irving Street NW, Washington, DC. The contact person for the facility is Leo Garner, Director of Facilities/Safety Officer, at (202)877-1050.

Emergency Water Pump to be Permitted:

Equipment Location	Address	Engine Size	Engine Model Number	Fuel Type
MedStar National Rehabilitation Hospital	102 Irving Street NW Washington, DC	115 hp	4045TF150A	Diesel

The proposed emission limits are as follows:

a. Visible emissions shall not be emitted into the outdoor atmosphere from this emergency water pump engine, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].

b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the water pump engine are as follows:

Pollutant	Maximum Annual Emissions (tons/yr)
Carbon Monoxide (CO)	0.19
Oxides of Nitrogen (NO_x)	0.89
Total Particulate Matter (PM Total)	0.0633
Volatile Organic Compounds (VOCs)	0.0723
Sulfur Dioxide (SO_2)	0.0589

The application to operate the emergency water pump and the draft permit and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after October 19, 2015 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF ENERGY AND ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue Permit #7031 to Not for Profit Hospital Corporation / United Medical Center to operate one Cleaver Brooks 600 bhp dual fuel-fired (natural gas and No. 2 fuel oil/diesel) boiler with a heat input of 24.323 MMBtu/hr when burning natural gas and 24.382 MMBtu/hr when burning No. 2 fuel oil, located at 1310 Southern Avenue, SE, Washington, DC. The contact person for the facility is Anthony Rakis, Director of Facilities, at (202)574-6516.

Boiler to be Permitted

Equipment Location	Address	Boiler Size	BoilerModel No.	Permit No.
Steam Plant	United Medical Center 1310 Southern Avenue SE Washington, DC 20032	24.323 MMBtu (gas) 24.382 MMBtu/hr (oil) 66.5 bhp	ICB-LN(4-PASS)	7031

The proposed emission limits are as follows:

a. The boiler shall not emit pollutants in excess of those specified in the following table [20 DCMR 201]:

Pollutant	Short-Term Limit (Natural Gas) (lb/hr)	Short-Term Limit (Diesel Fuel Oil) (lb/hr)
Carbon Monoxide (CO)	0.91	0.906
Oxides of Nitrogen (NO_x)	0.85	2.68
Total Particulate Matter (PM Total)*	0.179	0.334
Volatile Organic Compounds (VOC)	0.091	0.091
Sulfur Dioxide (SO_2)	0.014	1.124

*PM Total includes both filterable and condensable fractions.

b. Visible emissions shall not be emitted into the outdoor atmosphere from this boiler, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].

c. Particulate matter emissions from the boiler shall not be greater than 0.08 pounds per million BTU. [20 DCMR 600.1]

d. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

e. NO_x and CO emissions shall not exceed those achieved with the performance of annual combustion adjustments on the boiler. To show compliance with this condition, the Permittee shall, each calendar year, perform adjustments of the combustion processes of the boiler with the following characteristic [20 DCMR 805.8(a) and (b)]:

1. Inspection, adjustment, cleaning or replacement of fuel burning equipment, including the burners and moving parts necessary for proper operation as specified by the manufacturer;

2. Inspection of the flame pattern or characteristics and adjustments necessary to minimize total emissions of NO_x and , to the extent practicable, minimize emissions of CO;

3. Inspection of the air-to-fuel ratio control system and adjustments necessary to ensure proper calibration and operation as specified by the manufacturer; and

4. Adjustments shall be made such that the maximum emission rate for any contaminant does not exceed the maximum allowable emission rate as set forth in this section.

The estimated maximum potential emissions from the boiler are as follows:

Pollutant	**Maximum Annual Emissions Using Exclusively Natural Gas (tons/yr)**	**Maximum Annual Emissions Using Exclusively No. 2 Fuel Oil (tons/yr)**
Carbon Monoxide (CO)	4.0	4.2
Oxides of Nitrogen (NO_x)	3.8	11.8
Total Particulate Matter , PM (Total)	0.8	1.0
Volatile Organic Compounds (VOCs)	0.4	0.4
Sulfur Dioxide (SO_2)	0.1	5.1

The application to construct and operate the boiler and the draft permit and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's

name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after October 19, 2015 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Physical Therapy ("Board") hereby gives notice of a change in its regular meeting, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, D.C. Official Code § 3-1204.05 (b)) (2012 Repl.).

Due to schedule conflict, the Board's regular meeting scheduled for Tuesday, September 15, 2015, has been rescheduled to Tuesday, September 22, 2015 from 3:30 PM to 5:30 PM. The meeting will be open to the public from 3:30 PM until 4:30 PM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Act of 2010, D.C. Official Code § 2-574(b), the meeting will be closed from 4:30 PM to 5:30 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The Board's regular meetings are held at the same time on the third Tuesday of each month, with the next meeting scheduled to be held on Tuesday, October 20, 2015.

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health's Events webpage at www.doh.dc.gov/events to view the agenda.

KINGSMAN ACADEMY PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Legal Services

Kingsman Academy Public Charter School is seeking competitive proposals for ongoing legal services. For a copy of the RFP, email procurement@kingsmanacademy.org. Deadline for submissions is 5:00 pm on Monday, September 28, 2015. **No phone calls please**.

THE NOT-FOR-PROFIT HOSPITAL CORPORATION

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

The monthly Governing Board meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will be held at 9:00am on Thursday, September 24, 2015. The meeting will be held at 1310 Southern Avenue, SE, Washington, DC 20032, in Conference Room 2/3. Notice of a location, time change, or intent to have a closed meeting will be published in the D.C. Register, posted in the Hospital, and/or posted on the Not-For-Profit Hospital Corporation's website (www.united-medicalcenter.com).

AGENDA

I. CALL TO ORDER

II. DETERMINATION OF A QUORUM

III. APPROVAL OF AGENDA

IV. CONSENT AGENDA

A. READING AND APPROVAL OF MINUTES

1. July 23, 2015 – Board of Directors General Meeting

B. EXECUTIVE REPORTS

1. Dr. Julian R. Craig, Chief Medical Officer
2. Thomas E. Hallisey, Chief Information Officer
3. Jackie Johnson, EVP of Human Resources
4. Pamela Lee, EVP of Hospital Operations & CQO
5. David Thompson, Interim Director of Public Relations and Communications
6. Maribel Torres, Chief Nursing Officer
7. Charletta Washington, EVP of Ambulatory & Ancillary Services

V. NONCONSENT AGENDA

A. CHIEF EXECUTIVE REPORTS

1. Andrew L. Davis, Interim CEO
2. Barbara Roberson, Interim CFO

B. MEDICAL STAFF REPORT

1. Raymond Tu, Chief of Staff

C. COMMITTEE REPORTS

1. Patient Safety and Quality Committee
2. Governance Committee
3. Finance Committee
4. Strategic Planning Committee

D. OTHER BUSINESS

1. Old Business
2. New Business

E. ANNOUNCEMENT

Next Meeting – Thursday, October 22, 2015 at 9:00am in Conference Rooms 2/3.

F. ADJOURNMENT

NOTICE OF INTENT TO CLOSE. The NFPHC Board hereby gives notice that it may close the meeting and move to executive session to discuss collective bargaining agreements, personnel, and discipline matters. D.C. Official Code §§2 - 575(b)(2)(4A)(5),(9),(10),(11),(14).

PAUL PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

African Drumming Teacher

The Paul Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for the following services:

- African Drumming Teacher

Please contact **William B. Henderson** at whenderson@paulcharter.org for a full RFP offering, with more detail on scope of work and bidder requirements.

Proposals shall be received no later than **5:00 P.M., Thursday, September 24, 2015**.

Prospective Firms shall submit one electronic submission via e-mail to the following address:

William B. Henderson
whenderson@paulcharter.org

Please include the bid category for which you are submitting as the subject line in your e-mail (e.g. African Drumming Teacher). Respondents should specify in their proposal whether the services they are proposing are only for a single year or will include a renewal option.

OFFICE OF THE DEPUTY MAYOR
FOR PLANNING AND ECONOMIC DEVELOPMENT

FY2016 CREATIVE AND OPEN SPACE MODERNIZATION GRANT

TECHNICAL AMENDMENT

The Office of the Deputy Mayor for Planning and Economic Development (DMPED) invites the submission of grant applications from qualified businesses that lease space in the District of Columbia. The purpose of the Creative and Open Space Modernization Grant is to foster the development of creative and technology-focused businesses in the District, increase the District's tax base, and create new job and economic opportunities for District residents, especially those who live and/or work in underserved and overlooked communities. Funding for this program is authorized from the Creative and Open Space Modernization Emergency Amendment Act of 2015, passed on an emergency basis on June 30, 2015 (enrolled version of Bill 21-0283), and any subsequent emergency and permanent legislation.

The purpose of this technical amendment is to provide updates to the Request for Applications (RFA) that was issued for this grant program on Friday, August 7, 2015.

CLARIFICATION ON LEASE TIMING
On page 1 of the RFA, under Section I. Introduction, please note that grant funds will be utilized to assist grantees with tenant improvements connected with a lease that ***commences*** after July 1, 2015 for office space that is located in the District.

APPLICABILITY OF FIRST SOURCE LAW
Pursuant to the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Law 19-84, D.C. Official Code §§ 2-219.01 *et seq*.), the rules and regulations promulgated thereunder and Mayor's Order 83-265, as the same may be amended, one of the primary goals of the District is the creation of job opportunities for District of Columbia residents. Accordingly, applicants receiving grant funds over $300,000 shall enter into a First Source Employment Agreement, prior to the execution of their grant agreement, with the District of Columbia Department of Employment Services ("DOES") that shall, among other things, (i) require the grantee to hire and require its consultants, contractors, and subcontractors to hire at least fifty-one percent (51%) District of Columbia residents for all new jobs created by the project, all in accordance with such First Source Employment Agreement, and, as applicable, (ii) ensure that at least fifty-one percent (51%) of apprentices and trainees employed are residents of the District of Columbia and are registered in apprenticeship programs approved by the DC Apprenticeship Council as required under D.C. Official Code §§ 32-1401 *et seq*. Collective bargaining agreements shall not be the basis for a waiver of these requirements.

Please refer to the following website for information on the First Source Agreement: http://does.dc.gov/page/first-source-employment-program-.

Please refer to the following website for additional information on the DOES apprenticeship program: http://does.dc.gov/service/apprenticeships.

For additional information on First Source, please contact Anetta Graham at (202) 698-3757 or anetta.graham@dc.gov. For additional information on the apprenticeship program, please contact Drew Hubbard at (202) 698-6006 or drew.hubbard@dc.gov.

APPLICABILITY OF CERTIFIED BUSINESS ENTERPRISE (CBE) LAW

Pursuant to the Small and Certified Business Enterprise Development and Assistance Act of 2005 ("CBE Law") (D.C. Official Code 2-218.01 et seq.), recipients of grant funds in excess of $250,000 shall contract with Small Business Enterprises ("SBEs") at least 35% of the total project budget. If there are insufficient qualified SBEs to fulfill the 35% requirement, the requirement may be satisfied by contracting at least 35% of the total development budget to qualified Certified Business Enterprises ("CBEs"). Accordingly, applicants receiving grant funds in excess of $250,000 shall execute an Acknowledgement Form with the District of Columbia Department of Small and Local Business Development ("DSLBD") prior to the execution of their grant agreement.

DSLBD determines which entities qualify as SBEs and CBEs pursuant to the CBE Law. Respondents are encouraged to exceed the District's SBE/CBE contracting requirements.

For additional information about the CBE program, please contact Malik Edwards at (202) 741-0895 or malik.edwards@dc.gov.

Please direct all other inquiries to:

LaToyia Hampton**,** Grants Manager
Office of the Deputy Mayor for Planning and Economic Development
1100 4th Street SW, Suite E500
Washington, DC 20024
Telephone: (202) 724-7648
Email: LaToyia.Hampton@dc.gov

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 631, AFL-CIO,	PERB Case No. 09-U-57
Complainant,	Opinion No. 1530
v.	Decision and Order
The Government of the District of Columbia, *et al.*,	
Respondents.	

DECISION AND ORDER

I. Statement of the Case

On February 18, 2015, the D.C. Court of Appeals affirmed a D.C. Superior Court decision that reversed and remanded PERB's Decision and Order in *American Federation of Government Employees, Local 631, AFL-CIO v. District of Columbia, et al.,* 59 D.C. Reg. 7334, Slip Op. No. 1264, PERB Case No. 09-U-57 (2012) ("Slip Op. No. 1264). In that case, the Board found that the Respondents, the District of Columbia Office of Property Management ("OPM") and the District of Columbia Office of Labor Relations and Collective Bargaining ("OLRCB"), violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing to arbitrate a group grievance filed by the Complainant, American Federation of Government Employees, Local 631, AFL-CIO ("AFGE"), over a reduction-in-force ("RIF") that OPM had conducted in its Facilities and Construction Divisions. Consistent with the D.C. Court of Appeals' and the D.C. Superior Court's decisions, the Board vacates Slip Op. No. 1264, and dismisses AFGE's Complaint.

II. Background

In Slip Op. No. 1264, the Board adopted a hearing examiner's finding that Respondents committed unfair labor practices in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5) when they refused to arbitrate a group grievance filed by AFGE over a 2009 reduction-in-force ("RIF"). Respondents argued that PERB did not have jurisdiction to adjudicate RIFs, and that

even if it did, D.C. Official Code § 1-624.08(j)[1] in the Abolishment Act[2] excludes RIF issues from arbitration. The Board adopted AFGE's arguments that although D.C. Official Code § 1-624.08(j) makes the process of identifying positions to be abolished non-negotiable, the statute did not expressly render other RIF issues covered by the parties' collective bargaining agreement to be non-arbitrable once that identification process was complete. Thus, the Board found that PERB had jurisdiction over the matter, and that Respondents repudiated the collective bargaining agreement in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5) when they refused to arbitrate AFGE's grievance.[3]

Respondents appealed Slip Op. No. 1264 to the D.C. Superior Court. In its August 1, 2013 Order, the Superior Court noted that:

> PERB "did not conduct any analysis of the language, structure, or purpose of the statutory provision." *D.C. Office of Human Rights*, 40 A.3d at 925. Rather, the PERB Decision simply stated that it rejected DGS's exceptions to the Hearing Examiner's Report "[f]or the reasons articulated by [AFGE]." (Record, 624 (PERB Decision).) When considering an agency decision devoid of such analysis, the Court—which, in comparison to PERB, is an "authority on issues of statutory interpretation," *D.C. Office of Human Rights*, 40 A.3d at 923—is directed by our Court of Appeals that "it would be incongruous to accord substantial weight to [the] agency's interpretation," *id*. at 925.[4]

The Superior Court then reasoned that the Abolishment Act explicitly removes agencies' RIF decisions from the purview of collective bargaining. For example, the Court noted that D.C. Official Code § 1-624.08(a) of the Act states that "each agency head is authorized, within the agency head's discretion, to identify positions for abolishment" and that such authority is not limited by "any other provision of law, regulation, or *collective bargaining agreement*."[5] Further, the Court noted that § 1-624.08(c) requires that "[a]ny District government employee … who encumbers a position identified for abolishment shall be separated…." Finally, the Court

[1] D.C. Official Code § 1-624.08(j): "Notwithstanding the provisions of § 1-617.08 or § 1-624.02(d), the provisions of this chapter [governing reductions-in-force] shall not be deemed negotiable."
[2] Congress enacted the Abolishment Act as Section 2408 of the District of Columbia Appropriations Act of 1998, 111 Stat. 2160 (1998). The District of Columbia Council amended the Act to cover fiscal year 2000 and subsequent fiscal years. *See* D.C. Official Code § 1-624.08, *et seq*.; *see also Washington Teachers' Union, Local 6, v. District of Columbia Public Schools*, 960 A.2d 1123, 1126 n.6 (D.C. 2009).
[3] *See AFGE, Local 631 v. District of Columbia, et al., supra*, Slip Op. No. 1264, PERB Case No. 09-U-57.
[4] *See Government of the District of Columbia v. District of Columbia Public Employee Relations Board*, Case No. 2012 CA 004861 P(MPA) (D.C. Super. Ct. Aug. 1, 2013). The Board notes that while the Complaint named the "District of Columbia" as the respondent and made specific allegations against OPM and OLRCB, the Superior Court stated in footnote 1 of its Order that: "[w]hile Petitioner here is the District of Columbia, the agency at issue in this case is the District of Columbia Department of General Services, known as DGS. This agency was previously known as the 'Department of Real Estate Services,' ('DRES'); the name change reflects a difference 'in name only: the scope of work for the employees remained the same.'" (Citation omitted).
[5] *Id*. (emphasis added by the Court).

pointed to § 1-624.08(j), which states that "the provisions of this chapter shall not be deemed negotiable."[6]

Based on these provisions, the Superior Court found that PERB's holding in Slip Op. No. 1264 was contrary to the "plain language" of the Act, and was therefore "unreasonable." The Court stated:

> The Abolishment Act unequivocally states that an agency head's authority to identify positions for reductions-in-force is not limited by "any other provision of ... [a] collective bargaining agreement." D.C. Code § 1-624.08(a). The distinction PERB draws between a provision of a "collective bargaining agreement" as described by the statute and "arbitration of reduction-in- force issues covered by a party's collective bargaining agreement" is non-existent; an arbitration clause found within a collective bargaining agreement (and that provides the entire basis of a claim that a dispute is subject to arbitration) is part of the collective bargaining agreement, and is therefore included within the express terms of § 1-624.08(a). Indeed, in this very case AFGE expressly premised its complaint not upon a statutory or other right to arbitration of the RIF, but on a provision of a collectively-bargained agreement, Article 29 of the CBA between itself and DGS. *See* Record, 551-52 (Step 4 Grievance). Contrary to PERB's interpretation of the Abolishment Act, given the other language in the statute permitting agency heads to identify positions for abolishment "[n]otwithstanding *any* other provision of … [a] collective bargaining agreement," § 1-624.08(a) (emphasis added), the absence of any specific reference to arbitration in § 1-624.08 is immaterial. Therefore, to the extent the PERB Decision is deserving of any deference from this Court despite its utter lack of analysis, § 1-624.08(a)"s "plain statutory language" requires that the Court "reject [the] agency's interpretation." *D.C. Office of Human Rights*, 40 A.3d at 923.[7]

Thus, the Superior Court reversed Slip Op. No. 1264, and remanded the case to PERB for consideration consistent with the terms of its Order.[8]

PERB appealed the Superior Court's Order to the D.C. Court of Appeals. In its February 18, 2015 Memorandum Opinion and Judgment, the Court of Appeals agreed with the Superior Court's conclusion that the "plain statutory language" of D.C. Official Code § 1-624.08(a) "simply permits no limitation derived from a collective bargaining agreement on an agency

[6] *Id.*
[7] *Id.*
[8] *Id.*

head's ability to implement a RIF."[9] The Court reasoned that based on the statute's specific uses of the language in § 1-624.08(a) that "[n]otwithstanding any … collective bargaining agreement in effect or to be negotiated," and in § 1-624.08(j) that "[n]otwithstanding the provision of § 1-617.08…, the provisions of this chapter shall not be deemed negotiable," it is clear that the arbitration clause in the parties' collective bargaining agreement did not apply to the agency's RIF. Accordingly, the Court of Appeals affirmed the Superior Court's reversal and remand of Slip Op. No. 1264.[10]

III. Analysis

Consistent with the D.C. Court of Appeals' and the D.C. Superior Court's opinions, the Board vacates its Decision and Order in Slip Op. No. 1264.

Additionally, in accordance with the Court of Appeals' unambiguous holding that, under D.C. Official Code §§ 1-624.08(a) and (j), the arbitration clause in the parties' collective bargaining agreement did not apply to OPM's 2009 RIF, the Board finds that Respondents did not violate D.C. Official Code §§ 1-617.04(a)(1) and (5) when they refused to participate in the arbitration of AFGE's group grievance.[11] Accordingly, AFGE's Complaint is dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Board's Decision and Order in Slip Op. No. 1264 is vacated.

2. AFGE's Unfair Labor Practice Complaint is dismissed with prejudice.

3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Keith Washington and Yvonne Dixon. Member Ann Hoffman was not present.

July 24, 2015

Washington, D.C.

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[9] *American Federation of Government Employees, Local 631 v. District of Columbia*, 13-CV-1000 (D.C. February 18, 2015).
[10] *Id*.
[11] *See Id*.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 09-U-57, Opinion No. 1530, was served by U.S. Mail on the following parties on this the 24th day of July, 2015.

Dean Aqui, Esq.
Michael Levy, Esq.
D.C. Office of Labor Relations and
Collective Bargaining
441 4th Street, N.W.,
Suite 820 North
Washington, DC 20001

Barbara Hutchinson, Esq.
7907 Powhatan Street
Twelfth Floor
New Carrollton, MD 20784

/s/ Sheryl Harrington
PERB

Government of the District of Columbia
Public Employee Relations Board

In the matter of:

Fraternal Order of Police/District of Columbia Metropolitan Police Department Labor Committee Grievant: William Harper	)	
Petitioner,	)	**PERB Case No. 15-A-10**
v.	)	**Opinion No. 1531**
District of Columbia Metropolitan Police Department	)	
Respondent.	)	

DECISION AND ORDER

On April 10, 2015, Petitioner Fraternal Order of Police/ District of Columbia Metropolitan Police Department Labor Committee ("FOP" or "Petitioner") filed a timely Arbitration Review Request ("Review Request") of an Arbitration Award ("Award") upholding the termination of Grievant William Harper ("Harper" or "Grievant") from employment with the D.C. Metropolitan Police Department ("MPD" or Respondent"). For reasons stated herein, Petitioner's Review Request is denied.

I. Statement of the Case

On September 5, 2008, MPD Officer William Harper was working an approved off-duty job in uniform at the Wingate Apartments in Southwest, Washington, D.C. along with two other MPD officers, Rosa Roldan-Torres and Bridgette King. That evening, a fight erupted between two groups of 50-60 females where rocks, sticks, bricks and bleach were thrown. While citizen Deja Jennings admitted to picking up and throwing rocks, she also accused Harper of grabbing her, pushing her to the ground, and punching her in the face during the melee. She also alleged that after he punched her, he removed his badge and name plate and refused to identify himself. Jennings was taken to the hospital by ambulance and required stitches for a lip injury.

Even though a criminal investigation into the matter was initiated on March 18, 2009, the United States Attorney's Office notified MPD that it would not file criminal charges against

Officer Harper, after which, Sgt. Nick Kunysz of MPD's Force Investigations Branch, initiated an administrative investigation into the incident. On April 10, 2009, Sgt. Kunysz interviewed Harper. In that interview, Harper stated that he "did not push anyone during this incident." As a result of the investigation, a Notice of Proposed Adverse Action against Harper was filed on July 16, 2009, alleging four charges of misconduct; (1) untruthful statements; (2) using unnecessary force; (3) conduct unbecoming an officer; and, (4) neglect of duty. The Notice of Adverse Action also included an analysis of the *Douglas*[1] factors to assess the appropriateness of the penalty, and mentioned that during Officer Harper's tenure with MPD he had only "one sustained adverse action within the past three years."[2] After reviews by the Use of Force Review Board and the Adverse Action Panel[3], Officer Harper was found guilty on Charges 1 and 4.[4] Harper was terminated from MPD and unsuccessfully appealed the termination to Chief of Police Cathy L. Lanier. The case was then submitted to arbitration.

Based on a review of the evidence before him, Arbitrator Richard Anthony sustained the decisions of MPD in its termination of Officer Harper. The Arbitrator held that while there was no proof that Harper engaged in any wrongdoing on September 5, 2008, the date of the original incident, Harper did indeed give misleading statements to IAD during his interview on April 10, 2009. As a result of those misleading statements, the Arbitrator held that the adverse action was warranted and timely filed on July 16, 2009 because the charges came within the 90 day window after the April 10, 2009 interview. The Arbitrator also found that the Notice of Proposed Adverse Action was not unduly prejudicial based on the fact that the Adverse Action Panel was free to make its own analysis of the *Douglas* factors.

FOP has filed this Arbitration Review Request seeking to have the Arbitrator's Award reviewed on the grounds that it is contrary to law and public policy.

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[1] *Douglas vs. Veterans Administration*, 5 M.S.P.R. 280 (1981), sets forth the criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct. These factors include (1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated; (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position; (3) the employee's past disciplinary record; (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability; (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties; (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses; (7) consistency of the penalty with any applicable agency table of penalties; (8) the notoriety of the offense or its impact upon the reputation of the agency; (9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question; (10) the potential for the employee's rehabilitation; (11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

[2] Record at 3.

[3] In its own analysis of the *Douglas* factors the Adverse Action Panel found, "In the three year [sic] that Officer Harper has been a member of the Metropolitan Police Department, he has been cited for Adverse Action for Untruthful Statements twice and Conduct Unbecoming twice."

[4] Grievant was found Not Guilty on Charges 2 and 3 by the Adverse Action Panel.

II. **Analysis**

D.C. Official Code § 1-605.02(6) authorizes the Board to modify or set aside an arbitration award in only three limited circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[5]

Citing PERB Rule 538.3, FOP contends that this Arbitrator's Award should be reversed because the award on its face is contrary to law and public policy. FOP does not make any contentions that the Arbitrator was without or exceeded his authority, or that the Award was procured by fraud, collusion, or other similar and unlawful means.[6]

A. The Award is Not Contrary to Law and Public Policy

In order for the Board to find that an arbitrator's award is on its face contrary to law, the asserting party bears the burden to specify the "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result."[7] Furthermore, the Board has held that a mere "disagreement with the Arbitrator's interpretation … does not make the award contrary to law and public policy."[8]

1. The Arbitrator's 90 day Rule finding is not a violation of law and public policy.

D.C. Official Code §5-1031 requires MPD to bring any corrective or adverse action against a sworn member or civilian employee within 90 days of when MPD knew or should have known of the action. In this case, the Arbitrator had to address the date of the original incident on September 5, 2008 and the subsequent date of April 10, 2009 when Officer Harper allegedly gave untruthful statements to IAD.

The original incident occurred on September 5, 2008. The charges against Officer Harper were brought on July 16, 2009. The Arbitrator found that MPD did in fact exceed 90 days before bringing charges against Grievant. Therefore, the Arbitrator concluded that the charges and discipline imposed on Grievant for his conduct on September 5, 2008 must be rescinded.

On April 10, 2009, Officer Harper was interviewed by IAD at which time, he allegedly gave untruthful statements. The Arbitrator reviewed the transcripts of the interviews of Officer

[5] *University of the District of Columbia v. PERB*, 2012 CA 8393 P (MPA)(2014)
[6] Request at 2-3.
[7] *District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 59 D.C. Reg. 11329, Slip Op. No. 1295, PERB Case No. 09-A-11 (2012).*District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 47 D.C. Reg. 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000).
[8] *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, Slip Op. No. 933, PERB Case No. 07-A-08 (2008); *see also District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Thomas Pair)*, 61 D.C. Reg. 11609, Slip Op. No. 1487 at pp. 7-8, PERB Case No. 09-A-05 (2014).

Harper and listened to the recordings. After his review, he made a factual determination that Officer Harper was indeed "…evasive, imprecise, circuitous, equivocating, and dishonest in that interview."[9] This factual finding was not challenged by FOP in its Arbitration Review Request.

On July 16, 2009, MPD gave the Notice of Proposed Adverse Action against Officer Harper charging him with making untruthful statements on April 10, 2009. The Arbitrator held that these allegations were within the 90 day Rule window. In its Arbitration Review Request, FOP argues that the statements that Harper made to IAD should be construed as part of the September 5, 2008 events at Wingate Apartments. MPD asserts in its opposition that FOP's arguments are nothing more than a disagreement with the Arbitrator's factual findings. We agree.

In this case there were two separate events that necessitated the starting of the 90 day Rule clock. The first incident was the original disturbance that occurred on September 5, 2008. This incident began the 90 day clock for the alleged neglect of duty. The second incident was the untruthful statements given by Officer Harper on April 10, 2009. Even though the conversation with IAD would not have occurred but for the incident at Wingate Apartments, these are two separate events. Contrary to the arguments made by FOP, the earlier event cannot be allowed as a shield for a police officer to lie to IAD. As the Arbitrator points out, lying by a police officer is taken so seriously that "nearly all police departments call for the discharge of an officer on the very first offense when the officer deals with the public and who [sic] intentionally lies to Internal Affairs…."[10] But for Grievant deciding to lie to IAD, he would have been completely exonerated from his behavior on September 5, 2008 and from his questioning by IAD on April 10, 2009.[11]

FOP's Arbitration Review Request does not articulate a law or a well-defined public policy that the Award violates. We find that the Arbitrator's conclusion that Grievant's April 10, 2009 statement to IAD was within the 90 day window of MPD filing charges against the Grievant on July 16, 2009 is supported by the record.[12]

2. *The Arbitrator's ruling on MPD's use the **Douglas** factors in its Notice of Proposed Adverse Action is not a violation of law and public policy.*

After the initial investigation, MPD filed a Notice of Adverse Action outlining the charges against Officer Harper. Contained in the notice was an analysis of the *Douglas* factors

[9] Award at 35.
[10] Award at 41.
[11] Responsibility for Grievant's behavior on September 5, 2008 was barred by the untimeliness of MPD's complaint, filed outside of the 90 day Rule window. If Grievant had been truthful on April 10, 2009, there would have been no remaining charges against him.
[12] D.C. Official Code § 5-1031(a-1)(1) states in pertinent part *"… no corrective or adverse action against any sworn member or civilian employee of the Metropolitan Police Department shall be commenced more than 90 days, not including Saturdays, Sundays or legal holidays, after the date that the Metropolitan Police Department had notice of the act or occurrence allegedly constituting cause."* In this case, there were 67 days between the interview and the filing of charges against Grievant.

to assess the appropriateness of the penalty as well as a statement that during Officer Harper's tenure with MPD, Grievant had only "one sustained adverse action within the past three years."[13]

The Arbitrator stated that:

> The Notice of Proposed Action was no doubt prepared and issued by the Department because they [sic] believed that Grievant was guilty of the offenses charged and that he should be terminated. That disclosure should not be surprising or at all prejudicial to the Panel. The whole appeal process is set up to pass judgement [sic] on the initial action taken by the Department. The Panel should have no problem, and this Arbitrator certainly has no problem with questioning and objectively analyzing the various conclusions reached by the Department as to charges made and the penalties recommended.

The Arbitrator continued:

> The inclusion of a discussion of the appropriate discipline for the alleged wrongdoing does not irreparably damage any ability of the Adverse Action Panel to be, and remain, impartial and objective.[14]

FOP asserts in its Review Request that the early presentation of the *Douglas* factors analysis contaminated the deliberations of the Adverse Action Panel.[15] In doing so, FOP claims that Officer Harper's due process rights were compromised because the Panel should have been allowed to reach its conclusion about the Grievant's guilt or innocence before being presented with the *Douglas* factors. Moreover, the Notice of Adverse Action should not have included information about any of Grievant's previous citations and "sustained prior misconduct ."[16]/[17] MPD argues that the imposition of the *Douglas* factors into the process had no bearing on the Panel's ultimate decision to terminate Harper.

We agree with the Arbitrator that the Panel was essentially conducting an appellate review of the Department's initial disciplinary findings and recommendation of sanctions. Likewise, the Panel should have had no problem with independently questioning and objectively analyzing the various conclusions reached by MPD as to the charges made and the penalties

[13] Record at 3.
[14] Award at 38.
[15] Citing *Douglas v. Veterans Administration*, 5 M.S.P.B. 280 (1981) FOB asserts that the determination of an appropriate penalty is appropriate "once the alleged conduct and its requisite general relationship to the efficiency of the service has been established."
[16] Award at 18.
[17] The Notice of Proposed Adverse Action regarding Grievant's past disciplinary action in its *Douglas* factors analysis stated only "you have one (1) sustained adverse action within the past three (3) years." A document entitled "Biographical Documentation" that was apparently considered by the Use of Force Review Board included about Grievant that he had received 7 commendations and 2 prior disciplinary charges (Untruthful Statement and Conduct Unbecoming.

recommended. The analysis of the *Douglas* factors in the Panel's Findings of Fact and Conclusion of Law is clearly more in depth than that offered by MPD.[18]

In its Arbitration Review Request, FOP asserts that the Arbitrator violated the law by approving MPD's utilization of the *Douglas* factors in the Grievant's Notice of Proposed Adverse Action. In fact, FOP stated twelve times that the Arbitrator's decision was illegal but failed to identify, at any point, what law was being violated. FOP did not rely on any specific, well-defined law or public policy that would compel and mandate setting aside the Arbitrator's Award.[19] Accordingly, we see no reason to alter the Arbitrator's decision on this point.[20]

B. Conclusion

Based on the foregoing, the Board finds that (1) the April 10, 2009 conversation that Grievant had with IAD is within the 90 day Rule window of the charges being filed by MPD on July 16, 2009 and (2) Grievant was not prejudiced by MPD including its *Douglas* factors analysis in the Notice of Proposed Adverse Action. Accordingly, the Board rejects FOP's arguments and finds no cause to modify or set aside the Arbitrator's Award. Furthermore, FOP has likewise not demonstrated that the Award constitutes a violation of an explicit, well defined public policy grounded in law or legal precedent. Thus, the Board finds that the Award was not, on its face, contrary to law and public policy. Accordingly, FOP's Request is denied and the matter is dismissed in its entirety with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The FOP review request is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Keith Washington and Yvonne Dixon. Member Ann Hoffman was not present.

July 24, 2015

Washington, D.C.

[18] Record at 666-669.
[19] See footnote 5.
[20] Without presenting any supporting arguments or citations, FOP stated at the very end of its Review Request that the "discipline issued in this case must be rescinded." The Board has no reason to address that issue.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-A-10, Opinion No. 1531, was served by File & ServXpress on the following parties on this the 24th day of July, 2015.

Marc L. Wilhite
PRESSLER & SENFTLE, P.C.
1432 K Street, N.W., 12th Floor
Washington, DC 20005

Lindsay M. Neinast
Assistant Attorney General
441 4th Street, N.W., Suite 1180 North
Washington, DC 20001

/s/ Sheryl Harrington

PERB

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY

DC Main Streets
(Congress Heights Target Areas)

The Department of Small and Local Business Development is soliciting applications from qualified non-profit organizations that are incorporated in the District of Columbia to **operate a DC Main Streets programs for the Congress Heights commercial corridor in Ward 8**.

The designated DC Main Streets program (organization) will receive $100,000 in grant funding and technical assistance to support a commercial revitalization initiative. This organization will develop programs and services to: (1) assist with the retention, expansion and attraction of neighborhood-serving businesses; and (2) unify and strengthen the commercial corridor. The DC Main Streets grant award is a recurring grant, which can be renewed annually as long as the grantee continues to meet the standards for accreditation by the National Main Street Center.

The grant recipient will be selected through a competitive application process and announced December 11, 2015. Interested applicants must complete an application and submit it electronically via email on or before **Wednesday, November 4, 2015 at 2:00 p.m.** Applicants submitting incomplete applications will be notified by Thursday, November 5, 2015 and will have until Friday, November 6, 2015 at 5 p.m. DSLBD will not accept applications submitted via hand delivery, mail or courier service. **Late submissions and incomplete applications will not be reviewed.**

The Request for Application (RFA) will be posted at www.dslbd.dc.gov (click on the Our Programs tab and then Solicitations and Opportunities on the left navigation column) on or before October 2, 2015.

Instructions and guidance regarding application preparation can be found in the RFA. DSLBD will host an Information Session on October 14, 2015 at 2:00 p.m. at the RISE Center on St. Elizabeth's East Campus (1100 Alabama Ave SE, Washington, DC 20032). Applicants are encouraged to bring their laptops to the Information Session so they may register on the online application.

DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA. For more information, contact Cristina Amoruso, DC Main Streets Coordinator, Office of Commercial Revitalization, Department of Small and Local Business Development at (202) 727-3900 or DSLBD.grants@dc.gov.

THE NEXT STEP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Wireless Security Door Lock System and Installation Services

The Next Step Public Charter School Solicits Proposals for Wireless Security Door Lock System and Installation Services for the 2015-2016 school year (July 1, 2015 – June 30, 2016).

The Request for Proposals (RFP) specifications such as scope and responsibilities can be obtained on Friday, September 11, 2015 from Taunya Melvin via email listed below.

Bids must be received by Friday, September 25, 2015 by 5 pm at the email address listed below. Any bids not addressing all areas as outlined in the IFB (RFP) will not be considered.

SUBMITT BIDS electronically to: **taunya@nextsteppcs.org**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18506-B of Ontario Residential LLC, as amended, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception from the roof structure provisions under § 777. 1 (§ 411.2) governing roof structure setbacks[1], a special exception from the requirement that all compact spaces be placed in groups of at least five contiguous spaces with access from the same aisle under § 2115.4, a variance from the off-street parking requirements under § 2101.1, and a variance from the loading berth and delivery space provisions under § 2201.1, to allow a mixed-use residential building with ground retail in the C-2-B District at premises 1700 Columbia, N.W. (Square 2565, Lot 52).

HEARING AND DECISION DATE:	February 26, 2013
BOARD'S ORDER ISSUED:	September 27, 2013
MOTION FOR RECONSIDERATION FILED WITH BOARD:	October 29, 2013
MOTION FOR RECONSIDERATION DENIED BY BOARD:	January 8, 2014
APPEAL FILED WITH DC COURT OF APPEALS:	November 29, 2013
DECISION OF DC COURT OF APPEALS VACATING IN PART AND REMANDING IN PART:	June 5, 2014
REQUEST FOR IMMEDIATE HEARING FILED:	October 1, 2014
REQUEST FOR IMMEDIATE HEARING DENIED:	November 18, 2015

ORDER DENYING REQUEST FOR IMMEDIATE HEARING

This matter involves a Decision and Order by the Board of Zoning Adjustment ("Board" or "BZA") granting zoning relief to allow a residential building with ground floor retail in the C-2-B zone. The Applicant, Ontario Residential LLC ("Applicant" or "Ontario") sought relief from parking and loading requirements and from the roof structure requirements. Only the roof structure requirements are relevant to the instant matter. The pertinent roof structure

[1] Initially, the Applicant also sought relief from the roof structure provisions governing the number and height of the roof structures on the proposed building. But as will be explained in greater detail, the Applicant withdrew these requests for relief after it revised its roof plan. The caption reflects the revised relief.

requirements are embodied in §§ 411.2, 411.3 and 411.5 of the Zoning Regulations, governing the setbacks, number, and height, respectively, of the roof structures on the proposed building.

The Board conducted a public hearing in this matter, at which time Adams Morgan for Reasonable Development ("AMFRD") was granted party status in opposition to the application. The Board approved the application at the close of the hearing and a final Board Order was issued in September, 2013 granting all relief requested. AMFRD moved for reconsideration and the Board denied the motion for reconsideration. (BZA Order No. 18506-A.)

AMFRD filed a petition to review the Board's order with the District of Columbia Court of Appeals (the "DCCA"). Once before the Court, AMFRD filed a motion for summary disposition claiming that the Board's Order did not sufficiently support Ontario's request for roof structure relief. In June, 2014, the Court issued an order that vacated two components of the roof structure relief: the number of structures and the height of the structures under §§ 411.3 and 411.5. The Court remanded those two requests for relief to the Board for further proceedings because the Board's Order did not explain why the construction of conforming roof structures was "impractical". The Court only vacated the portion of the order pertaining to these issues, such that the remainder of the Board's order remained in place.

On July 29, 2014, Ontario notified the Board (with a copy to AMFRD) that it had revised its roof plan to provide for roof structures that were conforming as to number and height. The new roof plan provides for a single roof structure that, on its face, no longer requires relief from requirements governing the number and height of structures. (Exhibit 42.) Ontario states that it amended its building permit application to now include a roof plan with a single structure of conforming height. According to Ontario, DCRA reviewed the revised roof plan, deemed it zoning compliant, and issued a building permit for the residential building without requiring further action from the Board. (Exhibit 42, Att. B).[2]

In the same notification, Ontario withdrew its request for relief from §§ 411.3 and 411.5. Ontario asserts that additional BZA proceedings are no longer necessary, as there is nothing left for the Board to review. AMFRD disagrees with Ontario's position and requests an "immediate hearing" based upon its interpretation of the Court of Appeals remand, and the Board's rules governing the modification of plans. (Exhibit 45, AMFRD's Request for an Immediate Hearing.) Each of these issues is addressed below.

The Court of Appeals remand has been rendered moot

The Board's Rules of Practice prohibit it from considering "moot" questions. (11 DCMR § 3100.7.) As noted by the Court of Appeals, "[a] case is moot when the legal issues presented are no longer 'live.'" *Cropp v. Williams*, 841 A.2d 328, 330 (D.C. 2004). That standard applies

[2] It is apparent that DCRA was aware of the Court's remand. Ontario submitted notes written by the "zoning reviewer" at DCRA. These notes reference the "modified plans to address court of appeals remand of rooftop structure issue". (Exhibit 47, Att. B.)

here. The roof structure plans that would have been the subject of the Court's remand have been replaced and approved by DCRA and the Applicant has withdrawn that portion of the application, which it may do as of right. Subsection 3113.10 of the Board's Rules of Practice and Procedure provides, in part, that an applicant may withdraw an application at any time. As a result, the plans complained of in AMFRD's DCCA appeal are no longer "live". Since the subject matter of the DCCA remand no longer exists, the remand has become moot and no hearing as to it is required,

The Board has found mootness in similar situations; for example, *Appeal No. 17980 of William J. Reaves* (2010) (Challenge to permit authorizing building without side yard rendered moot where revised plans depicted building with conforming side yard); *Appeal No. 16984 of Advisory Neighborhood Commission 2A* (2004) (appeal challenging portion of permit approving expansion rendered moot when renovation approved under revised permit which eliminated expansion); and *Application No. 15163-A of Saint James Washington Limited Partnership I* (2002) (application seeking extensive zoning relief rendered moot where application not prosecuted and property was developed through matter-of-right construction).

The Board agrees with Ontario that AMFRD is essentially requesting a compliance hearing regarding the revised roof structure and the building permit authorizing it. However, whether the revised plans are compliant with zoning is not before the Board in the instant matter. The Board is mindful of the fact that AMFRD filed a separate appeal of the permit authorizing the revised plans, and that case was decided on its merits independent of this Request for an Immediate Hearing.[3]

The Board lacks authority to conduct a "modification" hearing

AMFRD also claims that the Board was required to conduct a hearing under § 3129 of its Rules of Practice because the original plans were revised without leave of the Board. AMFRD correctly states that § 3129 pertains to the modification of plans before the Board. However, this modification never came before the Board; and the Board lacks authority to hold a hearing on a modification that has not been expressly requested by an applicant. Section 3129 only applies to modifications that have been requested and, here, no such request has been made.

The language within § 3129 makes it clear that a modification must first be requested in order to be reviewed by the Board. For example, § 3129.2 states, in pertinent part, "The Board shall consider *requests* to approve minor modifications…" (emphasis supplied). Subsection 3129.3 states, "A *request* for minor modification of plans shall be filed with the Board…" (emphasis supplied). Subsection 3129.4 references "[a]ll *requests* for minor modifications of plans…" (emphasis supplied); and so on.

[3] Appeal No. 18888 was heard on January 13, 2015 and decided orally on February 10, 2015. The Board has not yet issued its final Decision and Order.

Furthermore, the Board cannot compel Ontario to request a modification of its plans any more that it can preclude a withdrawal of the relief that was requested.

Neither the Zoning Act nor the Zoning Regulations authorize the Board to compel an applicant to take such steps. Ontario revised its roof plan, withdrew a portion of its request for zoning relief, and applied to DCRA for a building permit on the basis of its revised plans. Nothing in the Regulations requires additional BZA review as a modification, and the Board lacks authority to further scrutinize the revised roof plan at this time.[4]

Accordingly, the Board hereby **DENIES** AMFRD's Request for an Immediate Hearing regarding the roof structure relief, finding that the issues of concern have been rendered moot, and the Board lacks authority to conduct a modification hearing.

VOTE: **4-0-1** (Lloyd J. Jordan, Monique Y. Heath, S. Kathryn Allen, and Anthony J. Hood to Deny the request for an immediate hearing; Jeffrey L. Hinkle being necessarily absent.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: September 10, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO §3125.6.

[4] Of course as mentioned above, the Board has the authority to scrutinize the roof plan during an appeal of the building permit, and has in fact done so in BZA Appeal No. 18888.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 18820 of Senior Dwelling, Inc., pursuant to 11 DCMR §§ 3100 and 3101, from an April 21, 2014 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs to revoke rooming house Certificates of Occupancy Nos. 169076 and 169061, in the R-2 District at 223 and 225 56th Place, N.W. (Square 5248, Lots 112 and 113).

HEARING DATE: September 23, 2014
DECISION DATE: October 21, 2014

ORDER

This appeal was submitted to the Board of Zoning Adjustment ("Board" or "BZA") by Senior Dwelling, Inc. (the "Appellant"). The appeal challenges a decision made by the Zoning Administrator ("ZA") to revoke rooming house Certificates of Occupancy Nos. 169076 and 169061 ("Certificates") for 223 and 225 56th Place, N.E. (Square 5248, Lots 112 and 113) (the "Property"). The ZA moved to revoke on the ground that the Property was not being operated as a rooming house, as provided for in the Certificates. The Appellant alleges that the ZA erred, and that the Property is used as a rooming house. Based on the evidence in the record, including the prehearing submissions and testimony received at the public hearing, and for the reasons set forth below, the Board affirmed the decision of the Zoning Administrator.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing for September 23, 2014. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, Advisory Neighborhood Commission ("ANC") 7C (the ANC in which the property is located), the property owner, and DCRA. (Exhibits 9-11.)

Parties

The Appellant is Senior Dwelling, Inc., the owner of 223-225 56th Place, N.E. Ms. Rosemary Ogbenna is the sole owner of Senior Dwelling, Inc. DCRA is the Appellee, as the "person" whose administrative decision is the subject of the instant appeal. (*See,* 11 DCMR § 3199.1(a)(2).) The ANC was an automatic party, but did not participate in the case.

FINDINGS OF FACT

1. The subject Property is located at 223 and 225 56th Place, N.E. (Square 5248, Lots 112 and 113) in the R-2 zone.

2. The Property is comprised of two buildings: the 223 56th Place building and the 225 56th Place building.

3. The layout of the two buildings is identical. The first level has a living room, laundry area, bathroom, and a kitchen. The second level has an office, bedroom, and a bathroom. The third level consists of two bedrooms and a communal bathroom. The fourth level has four bedrooms and a communal bathroom.

4. Certificates of Occupancy ("C of O") Nos. 169076 and 169061 were issued to allow the Property to be used as two rooming houses.

5. Several of the persons living at the Property come directly from nursing homes (including St. Thomas Moore Nursing Home) and hospitals.

6. Many of these persons have suffered from serious medical conditions, such as schizophrenia, heart disease, and end stage renal disease, and have required the assistance of health aides in their daily living.

7. Every patient who was discharged to the Property from the St. Thomas Moore Nursing Home was prescribed a home health aide.

8. There are home health aides visiting the Property every day of the week.

9. Numerous residents at the Property have 24-hour health plans.

10. The Appellant has employed a "night sitter" to monitor at least one of the residents after the health aides had left for the day.

11. The resident director for the Property at times prepares food for the residents and is involved with handing out medications to the residents.

12. Ms. Ogbenna has served as the social security payee for various residents. In this capacity, the social security checks are sent directly to Ms. Ogbenna.

13. For various residents, Ms. Ogbenna has been listed as the responsible party for health issues. As a result, she is responsible for these residents' health care after the aides leave for the day.

14. The Appellant gives instructions to the daily nursing aides who visit the Property.

15. The walls of the Property are posted with notices labeled "Senior Dwelling Cleaning Instructions for Nursing Aides", "Nursing Aide Grouping Category," "Weekly Schedule," and "Senior Dwelling Rules and Regulations." These notices indicate that Appellant takes a role in directing the activities of the health aides.

16. The Appellant charges residents $1,000.00 per month for each room. This amount is high for a room without services, and suggests that the rental amount correlates with costs beyond the cost of a room.

17. Based upon Findings of Facts 8 through 17, the Zoning Administrator determined that the buildings were not used as rooming houses, but were used as a type of community based residence facility ("CBRF").

18. DCRA then issued a Notice to Revoke the Certificates.

19. This appeal was filed on June 20, 2014.

CONCLUSIONS OF LAW

The Board is authorized by the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to hear and decide appeals when it is alleged by the appellant that there is an error in any decision made by any administrative officer in the administration of the Zoning Regulations. (11 DCMR §§ 3100.2 and 3200.2.) In an appeal, the Board may reverse or affirm, in whole or in part, or modify the decision appealed from. (11 DCMR § 3100.4.)

Preliminary Matters.

The Appellant moved to stay the appeal pending the outcome of a case also involving the Appellant before the Office of Administrative Hearings ("OAH"). The Board denied Appellant's motion because the proceedings before OAH and the Board are two entirely different matters. The OAH case is not (and could not be) a zoning case but pertains to the revocation of Senior Dwelling's business license. The issue in this appeal concerns the proper use classification for the Property, *i.e.,* whether the Property is used as a "community based residential facility", as that term is defined in the Zoning Regulations. To the extent the Appellant's assertions in this proceeding that do not involve an interpretation of the Zoning Regulations, such as alleged harassment by District officials, the Board lacks jurisdiction to consider these issues. *Appeal No. 18239 of ANC 6A* (2011) (Board lacks authority to hear an appeal that is not based to some degree upon the interpretation of a zoning regulation).

The Merits of the Appeal

The Zoning Regulations provide that "no person shall use any structure, land, or part of any structure or land for any purpose until a certificate of occupancy has been issued to that person stating that the use complies with the provisions of this title." (11 DCMR § 3203.) This means that if premises are being used for a different purpose than as stated in the C of O, the premises are operating illegally and the certificate should be revoked. *See Kuri Bros., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 891 A.2d 241, 244 (D.C. 2006).

In this case, the C of Os for the Property only authorize a rooming house. The ZA decided the C of Os should be revoked because the Property is actually operating as a CBRF. The Zoning

Regulations provide that if an establishment is a CBRF, it "shall not be deemed to constitute *any other* use permitted under the authority of these regulations". (11 DCMR §199 (definition of CBRF).) It follows that, for zoning purposes, if this property is being used as is a CBRF it is operating as a different use than the rooming house use identified on its certificates of occupancy and therefore those certificates were properly revoked.

As defined by the Zoning Regulations, a "[CBRF is] a residential facility for persons who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living." Based on the facts of this case, the use occurring on the Property falls within the terms of the CBRF definition. The evidence establishes that many of the residents cannot live independently and require assistance with their daily activities. Several residents came to the facility directly from nursing homes and hospitals. It is logical to conclude that these individuals require some assistance in their daily living. Ms. Ogbenna also admits that numerous residents have required the assistance of health aides, that health aides visit the Property every day, that on at least one occasion she has employed a "night sitter" to monitor a resident's safety, and that the walls of the Property are posted with notices directing the activities of the health aides. Further, Ms. Ogbenna receives social security checks from some of the residents, as payment for their rooms. This arrangement is customarily found in nursing homes and the cost per room is consistent with such facilities. The evidence here therefore demonstrates the need of the Property's residents for specialized care.

Appellant's arguments to the contrary are not persuasive.

First, Appellant claims that because the home health aides are not directly employed by her, the Property is not a CBRF. However, the CBRF definition focuses on the *common need* for treatment, assistance, or supervision, not on who actually *provides* the care. In any event, as explained above, Appellant does play a role in the provision of treatment, supervision, and assistance for the Property's residents.

Lastly, Appellant claims that the Property does not qualify as a CBRF because some of the residents have not required the assistance of home health aides. Even if true, there is nothing in the CBRF definition that requires that every single resident require such assistance. The issue is what the primary use of the property is, and that use is clearly that of a CBRF.

For the reasons stated above, the Board concludes that the Appellant has not satisfied its burden of proof with respect to claims of error regarding the ZA's decision to revoke the Certificates. Accordingly, the decision of the Zoning Administrator to revoke the certificates of occupancy is affirmed**.**

VOTE: **4-0-1** (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Anthony J. Hood, voting to affirm the Zoning Administrator; S. Kathryn Allen not participating.)

BZA APPLICATION NO. 18820
PAGE NO. 5

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: September 9, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application Nos. 18852 & 18853 of SB-Urban, LLC, pursuant to 11 DCMR § 3103.2 for variances from the side yard requirements in § 775.1, the court width requirements in § 776.3, the parking requirements in § 2101.1, and the lot occupancy requirements in § 2604.2 of the Zoning Regulations, and pursuant to 11 DCMR § 3104.1, for special exceptions for parking for a historic resource under § 2120.6 and for roof structure standards under § 411.11 of the Zoning Regulations to allow the construction of two apartment buildings that will function as one building in the C-2-A District at premises 90 and 91 Blagden Alley, N.W. (Square 368, Lots 164 & 165).

HEARING DATES: November 5, 2014, December 2, 2014, and January 27, 2015
DECISION DATE: February 24, 2015

DECISION AND ORDER [1]

PRELIMINARY MATTERS

Application. This application was initially filed by SB-Urban, LLC ("Applicant") as two applications: one for each property described in the caption. The application for 90 Blagden Alley, N.W. (the "M Street Property") (Case No. 18852) was filed pursuant to 11 DCMR §§ 3103.2 and 3104.1 for variances from the court width requirements in § 776.3 and the lot occupancy requirements in § 2604.2 and for special exceptions for parking for a historic resource under § 2120.6 and for roof structure standards under § 411.11 to permit the construction of a multifamily apartment building. (Exhibits ("Ex.") 1-16 for Case No. 18852.) The application for 91 Blagden Alley, N.W. (the "9th Street Property") (Case No. 18853) was filed pursuant to 11 DCMR §§ 3103.2 and 3104.1 for variances from the side yard requirements in § 775.1, the parking requirements in § 2101.1 and for a special exception for roof structure standards under § 411.11 to construct a multifamily apartment building with a small amount of ground floor retail. (Ex. 1-16 for Case No. 18853.) The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2. (Ex. 5 for both cases.) The applications included photographs of the property and plans and elevations depicting the proposed buildings.

The Applicant filed a letter requesting that applications be heard and decided together because the buildings will be connected and will function as one residential building (the "Project"). (Ex. 16.) The Board granted this request.

Notice of Application and Notice of Public Hearing. By memoranda dated August 19, 2014, the Office of Zoning sent notice of the applications to the Office of Planning ("OP"); Advisory

[1] Unless otherwise specified, all references to exhibits in the record refer to the record for Case No. 18852.

Neighborhood Commission ("ANC") 2F, the ANC for the area within which the subject properties are located; the single-member district representative for ANC 2F06; the Councilmember for Ward 2; and the District Department of Transportation ("DDOT"). (Ex. 18-22.)

A public hearing was scheduled for November 5, 2014. Pursuant to 11 DCMR § 3113.12, the Office of Zoning mailed notice of the public hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 2F on August 21, 2014. (Ex. 25.) Notice of the public hearing was also published in the *D.C. Register* on August 22, 2014.

On October 1, 2014, the Applicant filed a motion for a continuance of the public hearing so that it could have additional time to work with the ANC. (Ex. 32.) The Board granted the motion and continued the public hearing to December 2, 2014.

Finally, the Applicant confirmed by affidavit that it had posted notice of the public hearing on the subject properties on November 13, 2014. (Ex. 34.)

Public Hearing. The Board of Zoning Adjustment ("Board") held a public hearing on the applications on December 2, 2014. At the end of the hearing, the Board closed the record except for two filings that it requested: transportation demand management studies from the Applicant and a revised letter from the ANC. The Board scheduled a continuation of the hearing limited to the information it requested. The continuation hearing was scheduled for January 27, 2015, when it was held.

Requests for Party Status. In addition to the Applicant, ANC 2F was automatically a party in this proceeding. Barbara Shauer filed a party status request on January 5, 2015. (Ex. 50.) Ahmed Ait-Ghezala filed a party status request on January 11, 2015. (Ex. 51.) The Board denied these requests for being untimely. (Hearing Transcript of January 27, 2015 ("1/27 Tr.") at 41-42.)

Applicant's Case. The Applicant provided testimony and evidence from Devon Perkins, the Project's architect, Jami Milanovich, the Project's traffic engineer, and Michael Balaban, a representative of SB-Urban, LLC. The Applicant and its witnesses described the project, explained the need for the various forms of zoning relief requested, and addressed issues regarding potential adverse impact. (Ex. 15, 36, & 37.) At the December 2, 2014 public hearing, at the Board's request, the Applicant's team presented testimony on the issues related to only the parking variance and parking special exception. (Hearing Transcript of December 2, 2014 ("12/2 Tr.") at 110-28.) Following the December 2, 2104 public hearing, at the Board's request, the Applicant filed additional information relating to transportation demand management ("TDM") studies. The Applicant filed this information about the TDM studies on January 20, 2015. (Ex. 53.) The Applicant's transportation engineer testified about the applicability of these studies to the Project at the January 27, 2015 public hearing. (1/27 Tr. at 43-44.)

Government Reports. By report dated November 21, 2014 and through testimony at the public hearing, OP recommended approval of the applications. (Exhibit 39; 12/2 Tr. at 128-30.) OP

found that the application satisfied all the criteria for the requested relief, including that the properties are affected by an exceptional condition resulting in a practical difficulty and that there would be no impact from the parking relief.

DDOT filed a report, dated November 25, 2014, stating that it had no objection to the requested parking relief and found the following:

- A robust public transit network exists near the Properties;
- The Properties are not within the District's Residential Permit Parking ("RPP") system and are not eligible to be;
- On street parking is either limited to RPP holders or is metered, and is therefore unsuitable for long-term parking by the Project's residents;
- The Project will generate minimal new vehicle trips; and
- Residents are likely to heavily use non-automobile modes of travel. (Exhibit 26.)

DDOT's report also included four conditions of approval to which the Applicant agreed.

ANC Report. At a regularly scheduled and duly noticed public meeting held October 1, 2014 with a quorum present, ANC 2F voted 6-0-1 to support the side yard variance, open court variance, lot occupancy variance, and roof structure special exception. At a regularly scheduled and duly noticed public meeting held on November 5, 2014 with a quorum present, ANC 2F voted 4-3-0 to support the parking variance and parking special exception. At the Board's request, the ANC filed a revised report. (Ex. 49.) The ANC concluded that the Applicant was responsive to ANC and community concerns and agreed to numerous conditions of approval. The ANC also concluded that the characteristics of the Project and its likely residents means that the residents will be unlikely to own cars, that the proffered TDM program will increase non-automobile travel, and, ultimately, that the Project will not have a substantial detriment to the public good or to the zone plan. (Ex. 49.)

Two representatives from ANC 2F also testified at the hearing: one of which was the Chair of the ANC's Community Development Committee, and the other was the Single Member District representative for the Properties. They reiterated the conclusions in their report and testified that the Project will be a benefit to the community because it will not add traffic in the alley and because it was created in collaboration with the community. (12/2 Tr. at 136-42.)

Persons in support. The Board heard testimony and received evidence from persons in support of the application. Cheryl Cort from the Coalition for Smarter Growth and Alexis Lefebvre testified in support of the application. (12/2 Tr. at 143-49; 1/27 Tr. at 53.) The Board also received two letters in support of the application. (Ex. 38, 40.)

Persons in opposition. At the December 2, 2014 public hearing, the Board heard testimony in opposition from eight people. The Board also received written submissions in opposition. (Ex.

33, 43, 44). At the January 27, 2015 public hearing, the Board heard testimony from three people, two of whom testified at the December 2, 2014 public hearing. (1/27 Tr. at 56-68.) At the January 27, 2015 public hearing, the Board granted a request to accept into the record additional materials in opposition.

Post-hearing submissions. At the conclusion of the January 27, 2015 public hearing, the Board closed the record except for the Applicant's rebuttal to the opponents' additional submissions and the Applicant's draft findings of fact and conclusions of law. (1/27 Tr. at 85-86.) On February 13, 2015, the Applicant submitted its rebuttal responding to the contested issues raised by the opponents and its proposed findings of fact and conclusions of law. (Ex. 64.)

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property includes two parcels of land. The M Street Property, 90 Blagden Alley, is located midblock along M Street NW (Square 368, Lot 165). The 9th Street Property, 91 Blagden Alley, is located midblock along 9th Street, N.W. (Square 368, Lot 164) (together with the M Street Property, the "Properties"). (Ex. 36, 37; 12/2 Tr. 110-17.)

2. The M Street Property is rectangular in shape and contains approximately 15,976 square feet of land area. It is bounded by the Blagden Alley system to the west, north, and east. The 9th Street Property is irregularly shaped and contains approximately 8,303 square feet of land area. It is bounded by the Blagden Alley system to the west and south. The Properties are oriented perpendicular to each other but separated by Blagden Alley. (Ex. 36, 37; 12/2 Tr. 110-16.)

3. Blagden Alley is active and is improved with a mix of building types that are used as small offices, retail shops, and residential dwellings, as well as rear access points to commercial and residential buildings that front on the surrounding streets. Blagden Alley connects to M Street as well as 9th Street adjacent to the Properties. Portions of Blagden Alley adjacent to the M Street Property, including the portion of Blagden Alley between the Properties, are 30 feet wide. The portion of Blagden Alley to the west of the M Street Property is only 15 feet wide. The portion of Blagden Alley to the south of the 9th Street Property is only 10 feet wide. (Ex. 36, 37; 12/2 Tr. 110-18.)

4. The Properties are located in the Blagden Alley/Naylor Court Historic District. The Project received concept approval from the District of Columbia Historic Preservation Review Board. (Ex. 36.)

5. The M Street Property is improved with a one-story former garage located at the rear of the parcel and surface parking. This structure is a contributing building in the Blagden Alley/Naylor Court Historic District. The 9th Street Property is unimproved and used as a surface parking lot. (Ex. 36.)

6. To the south of the M Street Property, across M Street, is a 10-story condominium building. To the east of the 9th Street Property, across 9th Street, is the Washington Convention Center. Parcels along M Street to the east of the M Street Property and the south of the 9th Street Property are improved with rowhouse dwellings and flats. To the north are primarily retail and office establishments and new apartment buildings. (Ex. 36, 37.)

7. The Properties are zoned C-2-A. The C-2-A Zone District permits multifamily residential dwellings as well as retail uses as a matter of right. Surrounding properties to the west and north are also located in the C-2-A Zone District. Other properties in Square 368 to the west, south, and east are located in the R-4 Zone District. (Ex. 13.)

The Applicant's Project

8. On the M Street Property, the Applicant will construct an addition to the existing historic garage building ("M Street Building"). On the 9th Street Property, the Applicant will construct a new building ("9th Street Building") that connects to the M Street Building through a pedestrian walkway over Blagden Alley. Although separate structures for zoning purposes, the Applicant will operate the structures as one apartment building with shared amenities, lobby, common spaces, and building services. The Project includes approximately 123 dwelling units, including approximately 79 units in the M Street Building and approximately 44 units in the 9th Street Building. The 9th Street Building also contains a small retail space. (Ex. 36; 12/2 Tr. at 110-18.)

9. The residential units will consist entirely of small, furnished studio apartments (each approximately 395 square feet) that are targeted at single professionals seeking living accommodations in walkable, transit-oriented neighborhoods proximate to the central business district as well as urban amenities. (Ex. 36; 12/2 Tr. at 123-28.)

10. The apartments will be fully furnished not only with furniture but also with linens, kitchen supplies, and televisions, thereby allowing residents to move-in with little more than clothes and small personal items. (Ex. 36; 12/2 Tr. at 126.)

11. Although the individual living units will be small, the Project will include significant shared common amenity areas and living spaces that will be located primarily in the converted historic garage. (Ex. 36.)

12. The Properties are located within three blocks (approximately 800 feet) of the entrance to the Mount Vernon Square-Convention Center Metrorail Station, along a Metrobus corridor, within a quarter-mile of two Capital Bikeshare stations, and within walking distance of many restaurants, drug stores, grocery stores, gyms, and other retail and service establishments. (Ex. 15, 36; 12/2 Tr. 118-19.)

13.

14. The Project will not include any vehicular parking spaces. The Project will include approximately 42 bicycle parking spaces within a large, secure bicycle storage room that will be equipped with bicycle maintenance facilities. (Ex. 36, 37.)

15. The Project will include affordable housing units consistent with the requirements of the Zoning Regulations. (Ex. 36.)

16. Each building will have a height of 50 feet and a FAR of 3.0, which are within the permitted height and FAR in the C-2-A Zone District for a residential multi-family building subject to Chapter 26 of the Zoning Regulations. The multifamily residential and retail uses are permitted in the C-2-A Zone District. The Applicant requested relief from certain other provisions of the Zoning Regulations as set forth below. (Ex. 37.)

Zoning Relief

9th Street Building—Variance Relief

17. Variance relief from the side yard and parking requirements of the Zoning Regulations is required for the 9th Street building for the reasons stated in finding of facts 17 and 18.

18. No side yard is required in the C-2-A Zone District, but if one is provided, the side yard must have a minimum width based on the height of the building. The 9th Street Building will include a side yard in order to effectively widen the 10-foot wide alley and to create an area for pedestrians to walk out of the vehicular right-of-way. The side yard width will be six feet, which is less than the eight foot-four inch side yard required under § 775.5 of the Zoning Regulations.

19. Subsection 2101.1 of the Zoning Regulations requires one space per two dwelling units, or 22 parking spaces, for the 9th Street Building. The 9th Street Building will not include any vehicular parking.

9th Street Building—Special Exception Relief

20. The Zoning Regulations generally require that each building enclose all penthouses and mechanical equipment within a single enclosure of uniform height that is set back one-to-one from all exterior walls. The 9th Street Building will have two separate roof structures of unequal height. The front roof structure will measure 13 feet-six inches and will enclose mechanical equipment and a stairway penthouse. The rear roof structure will vary in height from 13 feet–six inches to five feet, with mechanical equipment and a stairway penthouse in the taller portion and the elevator penthouse in the shorter portion. Both roof structures will be generally set back as required by the Regulations, except that the second roof structure will be only set back nine feet-seven inches from the central open court. The Applicant requested special exception approval pursuant to § 411.11 for multiple structures of unequal height and for not meeting the setback requirements.

M Street Building—Variance Relief

21. Variance relief from the lot occupancy and court requirements of the Zoning Regulations is required for the 9th Street building for the reasons stated in finding of facts 21 and 22.

22. Subsection 2604.2 of the Inclusionary Zoning Regulation permits portions of the building devoted to residential use in the C-2-A Zone District to have a maximum lot occupancy of 75% in order to achieve the bonus density permitted in § 2604.2. The M Street Building will occupy 89% of the lot at the ground floor level.

23. No courts are required in the C-2-A Zone District, but if courts are provided, § 776.3 provides that courts must have a minimum width of four inches per foot of height of the court. The M Street Building will have two courts on the west and east sides of to provide additional light and air to the residential units. However, the western court will have a width of approximately five feet, and the eastern court will have a width ranging from approximately seven feet-two inches to 12 feet-seven inches, which is less than the required 16 foot-eight inch court width required.

M Street Building—Special Exception Relief

24. Parking is required for additions to historic buildings when the addition increases the gross floor area of the resource by 50% or more. (11 DCMR § 2120.3.) Accordingly, the Zoning Regulations require one space per two dwelling units, or 40 parking spaces, for the M Street Building. Since the M Street Building will not have any vehicular parking, the Applicant requested special exception relief from § 2120.4 pursuant to § 2120.6.

25. The Zoning Regulations generally require that each building enclose all penthouses and mechanical equipment within a single enclosure of uniform height that is set back one-to-one from all exterior walls. The M Street Building will have two separate roof structures of unequal height. The front roof structure will measure 13 feet-six inches and enclose mechanical equipment and stairway penthouses; the rear roof structure will measure five feet and enclose the elevator penthouse. Both roof structures will be adequately set back from all exterior walls. The Applicant requested special exception relief for multiple structures of unequal height pursuant to § 411.11 of the Zoning Regulations.

Factual Findings Pertaining to the Variance Relief Requested for the M Street Property

Exceptional Condition

26. The existing building contributes to the historic district.

27. The lot is exceptionally long and is considerably larger than many others in the square.

28. The lot is also very narrow (69 feet) compared to its length (233 feet).

29. The property is bordered by the historic Blagden Alley on three sides.

30. The historic garage is located at the property's rear. Since it contributes to the historic district it must be retained because, under the District's historic preservation laws, a contributing building cannot be demolished absent exceptional circumstances.

31. The garage is one story, but it is built to the north, west, and east lot lines and occupies a significant portion of the lot.

Practical Difficulties

Open Court Width

32. Because the property is long and narrow with an alley on the east and west sides, setbacks in the M Street Building are necessary to provide light and air through windows that are not on the property and alley line. In particular, the cellar units will need the setbacks (courts) to accommodate the light wells, and units with windows on the alleys will need setbacks to buffer these windows from the alleys, which do not otherwise provide a separation from automobile traffic like sidewalks do for streets.

33. In addition, the western court will help maintain a view of the historic garage by pulling back the new structure to reveal the old when viewed from M Street. These setbacks will not run the length of the building, so they will both be open courts. (Ex. 36, 37, 64.)

34. If the courts were conforming widths, then the units throughout and the corridor would be squeezed and unworkable for an apartment building. The core cannot be in another location because of the historic building, but it would hamper circulation in a narrow building. Also, the corridor must be a minimum width to function well for units on both sides, and widening the courts would force a constriction of the corridor to approximately five feet in width, which is functionally too narrow. Further, if the courts were widened, then the widths of the units decrease.

35. Since the Property is long and narrow, the most efficient layout is to have the double-loaded corridor in the center of the building running north-south. The long and narrow configuration of the property already limits the unit layout, and more constriction on such a layout would result in infeasibility. While the building program calls for small units, narrowing them any more to create conforming courts on both sides of the building would result in units so narrow that they could not accommodate all necessary functions (kitchens, bathrooms, closets) in an efficient or livable way.

The Public Good

36. The provided open courts will not restrict light or air because they open parallel onto the alley, and they provide more open space than if they were not provided at all. Courts are not

required in this zone. (Ex. 36, 64.)

Lot Occupancy

Practical Difficulties

37. The historic garage consumes a large portion of the lot, particularly once the new structure is added. The garage occupies 29% of the lot, which would leave only 46% of the lot for a conforming first floor. (Ex. 36, 37, 64.)

38. The footprint of the first floor of the new structure cannot be reduced without shrinking the footprint of the rest of the new structure because of core and plumbing alignments. This would result in a building with considerably less FAR than permitted (0.88 FAR – nearly 1/3 of what is permitted – would be lost).

39. Shrinking the footprint of the upper floors would require narrowing of the corridors, and such shrinking would render the units so small that they would be non-functional.

40. Constructing such a small structure on such a large lot would not be economically viable based on the fixed land costs and fixed construction costs. (Ex. 36, 37, 64.)

The Public Good

41. The overall height and density (FAR) of the building will be within the permitted zone limit, and the upper stories of the building will remain well within the lot occupancy limit. (Ex. 36, 64.)

Factual Findings Pertaining to the Variance Relief Requested for the 9th Street Property

Exceptional condition

42. The 9th Street Property is part of a project that includes another lot (M Street Property).

43. Only three other lots in the entire square are larger than the 9th Street Property (one of which is the M Street Property), and no others in the square have all of the above identified characteristics. (Ex. 36, 37, 64.)

44. The 9th Street Property is an irregular shape, has a narrow width, and is bounded on two sides by historic Blagden Alley.

Side Yard

Practical Difficulties

45. The Project lobby will be accessed from the alley into the M Street Building.

46. Residents of the Project and patrons of the retail establishments within the square will frequently bike or walk in the alley, which is 10 feet wide and used by motor vehicles.

47. The building design will incorporate the side yard along the alley to provide a pedestrian separation. The side yard will allow cyclists and pedestrians to safely move out of the automobile right-of-way, even in the absence of a traditional sidewalk.

48. Eliminating the side yard would produce a dangerous situation for pedestrians and cyclists.

49. Widening the side yard to a conforming width would compromise the viability of the Project by making the units excessively small. Such units would not allow for an efficient or livable layout and would render the Project infeasible. (Ex. 36, 37.)

The Public Good

50. The side yard will be entirely adjacent to the alley.

51. The building could lawfully be constructed without a side yard and thus the matter of right condition would allow for less light and air.

52. An easement to preserve the side yard will be made a condition of this order.

Parking

Practical Difficulties

53. The shape and narrowness of the lot cannot efficiently accommodate parking spaces, ramps, and drive aisles without digging deeply for many parking levels at great expense.

54. Providing underground parking results in a high rate of inefficiency - 78% would be dedicated to circulation - that would require multiple below-grade levels of parking. These additional levels will make the construction cost per parking space would be prohibitively high, resulting in higher rents that would ultimately render the Project non-viable.

55. Because the lot is so long and narrow, locating excavators in or near the site in a way that they could dig the entire lot would be a logistical challenge that may not even be feasible. (Ex. 36, 37, 64.)

56. Providing a few surface parking spaces at the rear of the property would create automobile-pedestrian conflicts.

57. Providing such spaces would also harm the historic character of Blagden Alley by introducing unnecessary surface parking that is not typical of the historic period.

58. If underground parking were provided, the entrance would have to be off the alley, which would introduce automobile traffic in Blagden Alley and would be to the detriment of the historic alley character that historically accommodated many types of non-automobile forms of transportation. (Ex. 36, 37, 64.)

The Public Good

59. Because of the property's location near the central business district (downtown), it is likely to have low residential parking demand. Evidence demonstrating regional and national trends toward non-auto transportation options and reduced auto ownership support this conclusion.

60. A study in which the data suggest that sites within the District's core have the lowest parking utilization rates further supports this conclusion. (Ex. 15, 64.)

61. Four recent studies demonstrate trends toward reduced car ownership rates and reduced car usage, and trends in Washington, D.C. region are consistent with this data.

62. The Project's neighborhood has comparatively low automobile ownership rates, and these rates are likely to continue to decline with national trends. (Ex. 15, 64.)

63. The site is located approximately 800 feet from the Mount Vernon/7th Street – Convention Center Metro Station and is served by six Metrobus routes and a major DC Circulator route.

64. Other non-auto transportation options are available in the site vicinity, including 21 car-sharing vehicles located within a ¼ mile of the site and two Capital BikeShare stations, each with 19 docks located two blocks from the site.

65. Additionally, two dedicated bicycle lanes provide north-south travel within two blocks of the site.

66. Proximity to transit and amenities/services correlates with lower residential parking demand, and residents without cars tend to choose such locations. Accordingly, since the property has high transit access, it is likely to have low parking utilization. (Ex. 15, 64.)

67. Significant public transportation options will have sufficient capacity for the Project residents. An adequate supply of car-share cars are within close proximity to the Project, the use of car-share services by Project residents will not sap the supply of on-street parking, and Capital Bikeshare will have adequate capacity once an Applicant-funded station is installed. (Ex. 15, 64.)

68. The estimated trip generation for the Project will be primarily by modes other than automobile, and the estimated number of automobile trips will not significantly impact the operation of the nearby intersections. (Ex. 15, 64.)

69. Condition No. 3 of this Order requires the implementation of a Transportation Demand Management Plan ("TDM" Plan).

70. Studies of other projects in the region demonstrate how TDM plans are effective in decreasing automobile use by residents. Further, that the studied projects provided parking demonstrates strong support for a conclusion that a TDM plan for a project without parking is likely to have an even greater impact on reducing automobile use. (Ex. 53, 64; 1/27 Tr. at 43-44.)

71. The Applicant changed the property's addresses to Blagden Alley addresses. DDOT confirmed that those addresses are not in the RPP system and that the Blagden Alley location is not consistent with RPP eligibility criteria. In the event that this might later change, the Board added a condition to the TDM Plan requiring that all leases preclude residents from obtaining RPP stickers.

72. Parking demand decreases as a walk score increases. Therefore, because of the property's high walk score, it is highly likely that there will be low demand for parking at the Project. (Ex. 15, 64.)

73. A greater supply of residential parking correlates with a higher demand for parking. Therefore, providing parking is more likely to encourage car ownership than the absence of parking for the Project. (Ex. 64.)

74. Because of the ample transit options and high walk score for the property, it is highly unlikely that residents in the Project would want or bring cars and that there would be very little – if any – demand for parking from Project residents. (Ex. 15, 64.)

Factual Findings Pertaining to Special Exception Relief for Parking (§2120.6) – M Street Property

75. Because of the alley widths and configurations along the sides of the M Street Property, entrances to parking on either side of the property would result in a greatly inefficient and impractical building, ramp, and garage configuration. (Ex. 36, 64.)

76. The existing openings at the garage's rear are not wide enough to accommodate a parking entrance because at least 20 feet of width is required to provide a code-compliant entrance.

77. Adding or expanding openings in the garage to accommodate a parking entrance would severely damage the historic appearance of the garage, would remove a significant amount of historic fabric within the garage, and most likely would not be permitted by the Historic Preservation Review Board and/or the Historic Preservation Office.

78. Such an entrance through the garage would not change the inefficient layout of the parking level underground. (Ex. 36, 64.)

79. The maximum number of expected residents will be 79. It is unlikely the residents will have guests.

80. Because the residential units are small, most residents will choose to socialize on-site with other residents in the amenities spaces or elsewhere at any of the many amenities or other social venues located in close proximity to the Project. (Ex. 36.)

81. The amount of traffic congestion that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood is likely to be nominal. (Ex. 15, 36, 64.)

82. Adequate off-site parking facilities in the neighborhood are expected to be available when the Project is complete. There are approximately 41 public parking facilities available to the public within ½ mile of the property, and these facilities have available capacity. However, it is very unlikely that residents of the Project will own cars and need parking. (Ex. 15, 36.)

83. The property is in close proximity to multiple public transportation options with high availability. The property is close to Metrorail, Metrobus, Circulator, and Capital Bikeshare, all of which can accommodate the residents of the Project. (Ex. 15, 64; 12/2 Tr. at 118).

Factual Findings Pertaining to Special Exception Relief for Noncompliant Roof Structures (§ 411.11) – M Street and 9th Street Properties

84. Two roof structures with walls of differing heights on each building are necessary to accommodate Building Code and building programming while avoiding the creation of one unnecessarily large roof structure on each building.

85. The location of the roof structure on the 9th Street Building is driven by the size of the lot and the necessity of locating the elevator overrun and electrical equipment in a particular location to accommodate building programming.

86. Providing a complying setback for the roof structure would result in an impractical building design. (Ex. 36.)

CONCLUSIONS OF LAW AND OPINION

Variance Relief

The Applicant seeks variances, pursuant to § 3103.2, from the open court width, lot occupancy, side yard width, and parking requirements to allow the construction of two buildings that will be one project operating as one building.

The Board is authorized under § 8 of the Zoning Act (D.C. Code § 6-641.07(g)(3)) to grant variances, as provided in the Zoning Regulations, "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or

exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." *See* 11 DCMR § 3103.2.

The Board concludes that the Applicant has met the burden of proof under § 3103.2.

For the reasons stated in Findings of Fact No. 25 through 30 and 41 through 43, the Board finds that both M Street Property and the 9th Street Property are each affected by an exceptional condition arising from a confluence of factors on each property. An exceptional condition affecting a property can arise from many factors – including history, shape, and location – and a confluence of factors may combine to give rise to the exceptional condition. *Gilmartin v. D.C. Bd. of Zoning Adj.*, 579 A.2d 1164, 1168 (D.C. 1990). In addition, it is not necessary that the property be unreservedly unique to satisfy the "exceptional condition" standard. Rather, the applicant must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood. *Id.* In this case, the confluence of the identified features on each of the M Street Property and 9th Street Property satisfy this legal standard for the exceptional condition affecting it because they lead to a practical difficulty for the Applicant in complying with the Zoning Regulations.

For the reasons stated in Findings of Fact No. 31 through 34, 36 through 39, 44 through 48, and 52 through 57, the Board finds that strict application of the open court width, lot occupancy, side yard width, and parking regulations would result in a practical difficulty to the Applicant due to the exceptional condition affecting each of the M Street Property and the 9th Street Property. The Applicant demonstrated with sufficient evidence and testimony that strict application of the Zoning Regulations would result in an inefficient and uneconomical building design. Indeed, economic or efficiency burdens are among those that the Board may evaluate as legitimate practical difficulties imposed by Zoning Regulations on the owner of a property. *Palmer v. D.C. Bd. of Zoning Adj.*, 287 A.2d 535, 542 (D.C. 1972). *See Wolf v. D.C. Bd. of Zoning Adj.*, 397 A.2d 936 (1979) (exceptional size and layout of dwelling precluded its marketing under matter of right conditions). Therefore, the demonstrated inefficient use of the Properties and inefficient design of the buildings that would result from the compliance with the parking, side yard width, open court width, and lot occupancy regulations would impose a practical difficulty upon the Applicant. As a matter of law, these demonstrated inefficiencies constitute a practical difficulty that justifies variance relief.

For the reasons stated above in Findings of Fact No. 31-34, the Board finds that the Applicant would face a significant design and functionality burden if the M Street Building were to comply with the minimum court width and lot occupancy requirements. (Ex. 36, 37, 64.). As noted by OP, a double-loaded corridor with compliant court widths would result in unusually narrow units,

and a single-loading corridor would be an inefficient design rarely seen in residential buildings. OP also stated: "The volume of the garage structure must be preserved, which means that [a] new structure can generally not be placed on top [of] the garage".

As to the 9th Street Building, the Board agrees with OP that "if a conforming side yard were proposed, the dimensional change would be small in absolute terms (6' to 8'4"), but would have a significant impact on the relatively small units within the project." (Exhibit 39.) The Board further concurs with OP that if strict application of the parking requirements were adhered to "there would need to be three levels of parking to meet the requirement and the levels would be extremely inefficient." (Exhibit 39.)

The Board was not persuaded by the opposition's arguments that a car elevator/automated parking system is a viable alternative for parking that would eliminate a practical difficulty for the Applicant. The Applicant explained that, while a car elevator/automated system may allow better access to an underground garage, it cannot change the high inefficiency of the layout of the garage in this case because parking spaces and drive aisles still must satisfy the minimum dimension requirements in §§ 2115.1 and 2117.5 of the Zoning Regulations. Also, variance relief would still be required to use a car elevator/automated parking system. Thus, the Applicant would still face a practical difficulty with a parking elevator/automated parking system. (Ex. 64.)

The Board finds no merit in the opposition's arguments that that the Applicant would not face a practical difficulty through strict application of the side yard and parking requirements. Even if some of the property's characteristics – considered individually – may be favorable for development, the combination of characteristics is not favorable for this development to comply with the side yard and parking requirements. It is not valid to compare this lot to residentially-zoned one-family dwelling and flat properties in the square because of the different development and use standards that affect this property due to its commercial zoning. The highest and best use of the lot (the apartment building proposed by the Applicant) results in a situation where parking and a conforming side yard cannot be provided without significant inefficiency in design. It is this resulting inefficiency in design and uneconomical use of land that results in a practical difficulty for the Applicant.

The Board finds that that the variance relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.

As to the side yard variance for the 9th Street Building, the Board notes that no side yard is required in this zone. The need for the variance results from the Applicant's desire to add adjacent space to the existing narrow alley to provide a wider area for residents and guests to access the Project's lobby. Since the absence of a side yard is permitted as of right, it is incongruent to find that providing a six foot alley would impair the public good or would impair the zone plan. In fact, the public good would be impaired if the alley were not provided, and, as noted, the project would be faced with practical difficulties in providing a compliant eight foot wide side yard. Granting the requested relief would not impair the intent of the Zoning

Regulations. As noted in the OP report, the relatively small difference between the required side yard and the proposed side yard would not impact the goal of providing light and air to uses within the building. Furthermore, the side yard abuts and alley so would not have a direct impact on any nearby uses.

For the reasons above in Findings of Fact No. 58 through 73, the Board finds that the parking variance for the 9th Street Building will not result in substantial detriment to the public good and will not impair the integrity of the zone plan.

Based on testimony and ample evidence provided by the Applicant's traffic engineer concerning parking demand, automobile use/ownership rates, transportation options, and the Applicant's proffered transportation demand management plan, the Board finds that granting the variance from the parking requirement will not adversely affect on-street parking availability in the neighborhood, will not create adverse traffic conditions in the neighborhood, and will not overburden the public transit modes in the neighborhood.

The Applicant sufficiently demonstrated with numerous studies that a need for parking at the Project is unlikely, that the conditions and enforcement mechanisms will prevent residents from parking on the street, and that ultimately, the District's transportation network is unlikely to be adversely affected by the granting of the variance. The opponents asserted that the studies regarding car ownership rates and usage cited by the Applicant are not valid or applicable to the Project, but offered no evidence to rebut or invalidate these studies. These studies were published by reputable organizations that study travel behavior and transportation characteristics.

Notwithstanding the opponents' assertion, the Board finds that the trip generation rates were appropriate for this site and applicable to the Applicant's traffic study. The trip generation estimates provided in the Applicant's traffic study are based on accepted industry methodology that DDOT vetted and accepted, and are based on sound principles that the Applicant explained. The assumptions used in the Applicant's traffic study are further substantiated by a study of a similar site in another city.

OP concurred that there would be no substantial detriment to the public good. OP noted that it is unlikely that residents would own cars and that there are ample transit options nearby. (Ex. 39; 12/2 Tr. at 129-30.) DDOT concurred that there would be no significant negative impact to the transportation network from the requested variance relief from the parking requirement. DDOT noted that, because of the property's proximity to transit and pedestrian/bicycle infrastructure, the Applicant's commitment to a strong TDM program, the inability of residents to obtain RPP, and the provision of adequate bicycle parking, the Project will lead to low levels of auto ownership and use. (Ex. 41; 12/2 Tr. at 131.)

The Board finds that conditions will be effective and enforceable because of enforcement sanctions that the Applicant would face for violating the conditions and because of the high cost of not complying. The Project's leases will include terms that prohibit residents from obtaining any sort of on-street parking passes, and the Applicant will have a strong incentive to enforce

these terms because of the assured vigilance of the neighborhood in monitoring Project resident parking. Also, the Applicant will record a covenant on the Properties that will prohibit residents from long-term parking on the street and from obtaining any sort of parking pass or permit. Finally, the Applicant will be vigilant in its own monitoring of the Project residents to assure compliance with the conditions. (Ex. 64.) The Board categorically rejects any claim that the Office of the Zoning Administrator enforcement mechanisms cannot enforce these conditions. In fact, the violation of any condition of this order would furnish a basis to revoke the building permit and certificate of occupancy for the Project. (12 DCMR A §§ 105.6.2 and 110.5.5.2.)

As to consistency with the zone plan, the intent of the Zoning Regulations is for adequate parking to be provided where needed. In this case, the Applicant has demonstrated that parking on-site would not be necessary.

The Board finds that the open court width and lot occupancy variances for the M Street Building will not result in substantial detriment to the public good and will not impair the integrity of the zone plan. OP noted, and the Board finds, that the design would provide significant courts that result in a definitive visual and structural break in the building mass and a setback from the adjacent alleys. As to lot occupancy, only the ground floor of the building would be noncompliant while the remaining floors are well within matter of right constraints. Thus, the Board shares OP's conclusion that the scale of the building is not out of character with the neighborhood. (Ex. 39.)

As to the side yard width, open court width, and lot occupancy variances, while the opponents offered alternative designs, the Applicant proved that the requested variances for the Applicant's design are not likely to have adverse impacts. As a matter of law, an applicant for a variance is not required to prove that its proposed design is the sole potential design for the property. *Washington Canoe Club v. D.C. Zoning Com'n*, 889 A.2d 995, 999 (2005). In general, the BZA does not consider alternative designs when determining whether the proposed design would have a substantial negative impact on the surrounding neighborhood. *Gilmartin*, 579 A.2d at 1170-71, 1172; *Wolf*, 397 A.2d at 945. The inquiry into potential impacts on the surrounding neighborhood from a proposed design occurs after the applicant has demonstrated uniqueness and practical difficulties. *Id.* Thus, the proper role of the Board is to analyze only the potential effect of the proposed design, not other putative design alternatives. By proving that the side yard width, open court width, and lot occupancy variances for the Project are not likely to cause substantial detriment to the public good or zone plan, then the Applicant has satisfied its burden that warrants variance relief.

Special Exception Relief

The Applicant seeks a special exception pursuant to § 2120.6 to allow no parking at the M Street Building, which is improved with a historic building that will be part of the new building. The Applicant also seeks a special exception pursuant to § 411.11 to allow multiple roof structures of multiple heights and for an inadequate setback for one roof structure.

The Board is authorized under § 8 of the Zoning Act (D.C. Official Code § 6-641.07(g)(2)) 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.

Subsection 2120.6 permits the Board to grant relief from all or part of the parking requirements for historic resources "if the owner of the property demonstrates that, as a result of the nature or location of the historic resource, providing the required parking will result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource." The subsection further requires that the Board address the following criteria:

(a) Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;

(b) Amount of traffic congestion existing and/or that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood;

(c) Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the redevelopment is complete; and

(d) Proximity to public transportation, particularly Metrorail stations, and availability of either public transportation service in the area, or a ride sharing program approved by the District of Columbia Department of Transportation.

The Board finds that the Applicant met its burden of demonstrating that, as a result of the nature or location of the historic resource, providing the required parking will result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource. The existing openings at the garage's rear are not wide enough to accommodate a parking entrance because at least 20 feet of width is required to provide a code-compliant entrance. Adding or expanding openings in the garage to accommodate a parking entrance would severely damage the historic appearance of the garage, would remove a significant amount of historic fabric within the garage, and most likely would not be permitted by the Historic Preservation Review Board and/or the Historic Preservation Office.

The Applicant also has satisfied the specific criteria in §§ 2120.6(a) – 2120.6(d). The maximum number of expected residents will be 79. It is unlikely the residents will have guests. Rather, because the residential units are small, most residents will choose to socialize on-site with other residents in the amenities spaces or elsewhere at any of the many amenities or other social venues located in close proximity to the Project. The amount of traffic congestion that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood is likely to be nominal. (Ex. 15, 36, 64.) Adequate off-site parking facilities in the neighborhood

are expected to be available when the Project is complete. There are approximately 41 public parking facilities available to the public within ½ mile of the property, and these facilities have available capacity. However, it is very unlikely that residents of the Project will own cars and need parking. (Ex. 15, 36.) The property is close to Metrorail, Metrobus, Circulator, and Capital Bikeshare, all of which can accommodate the residents of the Project. (Ex. 15, 64; 12/2 Tr. at 118)

Pursuant to § 3104.1, the Board finds that the proposed special exception under § 2120.6 will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Zoning Regulations intend for the provision of adequate parking where required. In this case, the Board finds that parking is not necessary for the Project. As also required by that provision, the Board finds that the proposed special exception under § 2120.6 will not tend to affect adversely the use of neighboring property. The proposed Project will not substantially impair traffic or parking availability in the neighborhood, and it will not substantially impair the District's transportation network.

Subsection 411.11

Subsection 770.6 (a) provides that in Commercial Zones housing for mechanical equipment or a stairway or elevator penthouse on the roof of a building or structure must comply with § 411 and must be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located. Subsections 441.3 and 411.5 provide that each building must enclose all penthouses and mechanical equipment within a single enclosure of uniform height.

Both buildings will have two roof structures of unequal height. As to the 9th Street Building, the front roof structure will measure 13 feet-six inches and will enclose mechanical equipment and a stairway penthouse. The rear roof structure will vary in height from 13 feet–six inches to five feet, with mechanical equipment and a stairway penthouse in the taller portion and the elevator penthouse in the shorter portion. The front roof structure of the M Street building will measure 13 feet-six inches and enclose mechanical equipment and stairway penthouses; the rear roof structure will measure five feet and enclose the elevator penthouse. This second roof structure will only set back nine feet-seven inches from the central open court.

Subsection 411.11 permits the Board to grant special exception relief from roof structure requirements when compliance would be "restrictive, prohibitively costly, or unreasonable" because "of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" provided, that the intent and purpose of Chapter 4 is not "materially impaired by the structure, and the light and air of adjacent buildings [is not] affected adversely."

The Board concludes this standard has been met. The Board finds that the Applicant sufficiently demonstrated how creating one roof structure on each of the buildings would create an unreasonably large roof structure that would tend to cause more adverse visual impacts. As to the setback requirement, the location of the roof structure on the 9th Street Building is driven by the size of the lot and the necessity of locating the elevator overrun and electrical equipment in a

particular location to accommodate building programming. Providing a complying setback for the roof structure would result in an impractical building design. (Ex. 36.)

Pursuant to §§ 411.11 and 3104.1, the Board finds that the proposed special exception under § 411.11 will not materially impair the intent of Chapter 4 and will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The intent of the roof structure requirements is to minimize the visual appearance of roof structures. The Applicant demonstrated that the proposed roof structures will minimize appearance greater than one conforming roof structure on each building would. Also, the inadequate setback for one roof structure on the 9th Street Building will not noticeably increase its appearance from the street. (Ex. 36.)

Pursuant to § 3104.1, the Board finds that the proposed special exception under § 411.11 will not tend to affect adversely the use of neighboring property and, as required by § 411.11, specifically finds that the light and air of adjacent buildings will not be affected adversely. (Ex. 36.)

Need for loading facilities

The opponents asserted that loading facilities are required for the M Street Building. By self-certifying, the Applicant assumes the risk that it may need additional or different zoning relief from that which it requested in order to obtain a building permit or certificate of occupancy. *Application No. 18263-B of Stephanie and John Lester*, 60 DCR 11350 (2011). Accordingly, the Board will not consider assertions of an erroneous certification to its review of an application and instead allows the Zoning Administrator to carry out the function of administratively interpreting the Zoning Regulations. *Id*.

Great Weight

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)).) As noted, ANC 2F voted 6-0-1 to support the side yard variance, open court variance, lot occupancy variance, and roof structure special exception. At a regularly scheduled and duly noticed public meeting held on November 5, 2014, with a quorum present, ANC 2F voted 4-3-0 to support the parking variance and parking special exception. At the Board's request, the ANC filed a revised report. (Ex. 49.) The ANC concluded that the Applicant was highly responsive to ANC and community concerns and agreed to numerous conditions of approval. The ANC also concluded that the characteristics of the Project and its likely residents means that the residents will be unlikely to own cars, that the proffered TDM program will increase non-automobile travel, and, ultimately, that the Project will not have a substantial detriment to the public good or to the zone plan. (Ex. 49.) For the reasons stated above, the Board agrees with the ANC's conclusions. Having explained why it finds the ANC's advice to be persuasive, the Board has afforded ANC 2F the great weight it is entitled under the statute.

The Board is required by § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990, (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2012 Repl.) to give "great weight" to the recommendation of the Office of Planning. In this case, the Board concurs with OP's recommendation that the application should be approved. Further, notwithstanding the contention of the opposition, the Board finds the OP report to be thorough and accurate.

Based on the findings of fact, and having given great weight to the recommendations of OP and ANC 2F, the Board concludes that the requested zoning relief can be approved.

For the reasons stated above, the Board concludes that the Applicant has satisfied the requirements for variances from the open court width, lot occupancy, side yard width, and parking requirements, as well as the requirements for a special exception for parking for a historic resource under § 2120.6 and for a special exception for roof structures under § 411.11 (Square 368, Lots 164 & 165). Accordingly, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of the applications for variances and special exceptions, **SUBJECT TO THE APPROVED PLANS, AS SHOWN ON EXHIBIT NO. 37 OF THE RECORD, AND SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Prior to the issuance of a Certificate of Occupancy for the buildings**, the Applicant shall:
    a. Record an easement with the Recorder of Deeds for 91 Blagden Alley, N.W. that will preserve the six-foot side yard along the alley for pedestrians and prevent future development in that area;
    b. Pay the cost of installing a new Capital Bikeshare station (27 docks and 14 bikes), and one year of its operating expenses, within ¼ mile of the Project site at an exact location to be determined by DDOT; and
    c. Record a covenant with the Recorder of Deeds for both properties that prohibits the Project and its residents from eligibility for Residential Permit Parking and for any other temporary parking passes or permits.
2. All marketing materials for the Project must provide a disclosure, in the same size print as for any other marketing documents, that residents cannot park on-site and cannot park on the street.
3. The Applicant shall implement a transportation demand management (TDM) plan that includes the following:
    a. Designate a member of the property management team as the Transportation Management Coordinator (TMC), who will be responsible for disseminating information to tenants. This position may be part of other duties assigned to that person;
    b. Notify residents that they are not eligible for a Residential Parking Permit (RPP). Include a provision in all leases that residents are not eligible for RPP and they are

prohibited from applying for or obtaining any short term, temporary, or visitor parking passes. The Applicant will work with DDOT to ensure that these restrictions are enforced. If a resident applies for and obtains an RPP pass, then it will be a violation of the lease;

c. Provide information and/or links to the most current transportation services websites, which shall include or be similar to the following:
   i. Capital Bikeshare,
   ii. Car-sharing services (ZipCar, Enterprise Carshare, Car2Go, etc.),
   iii. Uber,
   iv. Ridescout,
   v. DDOT's DC Bicycle Map,
   vi. goDCgo.com,
   vii. WMATA,
   viii. Commuter Connections Rideshare Program,
   ix. Commuter Connections Guaranteed Ride Home, and
   x. Commuter Connections Pools Program;

d. Provide two electronic displays – one in each building – in a common, shared space to provide real time availability information for nearby trains, buses, and other transportation alternatives;

e. Offer covered, convenient, and secure bike parking facilities inside the Project for at least 42 bicycles;

f. Provide a bicycle repair facility near the bike parking facilities;

g. For the life of the Project, provide all new residents Capital Bikeshare memberships for the terms of their initial leases;

h. Provide at least 10 shared bicycle helmets for use by the residents;

i. For the life of the Project, provide all new residents car-share memberships for the terms of their initial leases; and

j. Host an annual bicycle training event conducted by the Washington Area Bicycle Association or similar organization for residents.

4. **Two years after the Project is open**, the Applicant shall submit to DDOT, the Zoning Administrator, and the ANC, an independent transportation study on the effects of the Applicant's TDM measures on the community. If the study concludes that the TDM measures are not effective consistent with the goals presented to the Board, then the

Applicant must take measures to come into compliance with the goals and conduct another study within two years. If the first study concludes that the TDM measures are effective, then no further action is necessary.

5. The Applicant shall implement a loading and delivery management plan that includes the following:
    a. A member of the property management team will be designated as the loading coordinator, who shall be responsible for coordinating the limited loading activities in the building and informing residential tenants of the guidelines and procedures for loading and delivery operations;

    b. Include a provision in all leases that, for tenants who need temporary loading, tenants will be required to notify, at least three weeks in advance, the loading coordinator before moving in or out so that the loading coordinator can assist in the establishment of curb-side loading consistent with DDOT policies and procedures; and

    c. The project shall include a clearly marked package delivery room accessible to delivery vendors directly from 9th Street. The property management team shall direct all private courier services (UPS, FedEx, DHL, Peapod, etc.) to park in the provided loading spaces on 9th Street, and to observe signs which applicant shall post and maintain on and near the building entrance in the alley stating, "NO DELIVERY PARKING. DELIVERY PARKING ONLY IN LOADING SPACES PROVIDED ON 9TH STREET. DELIVERIES MAY BE LEFT AT PACKAGE DELIVERY ROOM ON 9TH STREET." The final locations of and language on the signs shall be subject to DDOT approval.

6. All trash pickup will occur from M Street. No trash containers shall be kept outside of the building. Trash haulers shall bring the trash containers outside when they arrive for pickup, and the trash haulers shall return the trash containers to inside the building once they have collected the trash.

7. The Applicant shall have flexibility to modify the design of the buildings to address any comments from the D.C. Historic Preservation Review Board or Historic Preservation Office staff during final review of the Project, so long as such modifications do not require any additional areas of relief or have a substantial impact on the final plans approved by the BZA.

VOTE: **3-0-2** (Peter G. May, Marnique Y. Heath, and Lloyd J. Jordan to Approve; Jeffrey L. Hinkle not participating; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: September 8, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. 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.

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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18878 of Alba 12th Street, LLC, pursuant to 11 DCMR § 3103.2, for variance relief from the requirements regarding floor-to-area ratio (§ 1706), rear yard (§ 774), and parking (§ 2101.1) to allow construction of an office building in the DD/C-2-C District at premises 1017 12th Street, N.W. (Square 316, Lot 821).

HEARING DATE: December 9, 2014
DECISION DATE: January 6, 2015

DECISION AND ORDER

On September 11, 2014, Alba 12th Street, LLC (the "Applicant"), the owner of 1017 12th Street, N.W. (Square 316, Lot 821) ("Subject Property"), filed a self-certified application with the Board of Zoning Adjustment (the "Board") for zoning relief. The application requests a variance from the requirements for floor-to-area ratio ("FAR") under § 1706 of the Zoning Regulations, rear yard under § 774, and parking under § 2101.1.[1] The Board held a public hearing on the application on December 9, 2014. On January 6, 2015, the Board voted to grant the application.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3114.2.

Notice of Public Hearing. Pursuant to 11 DCMR § 3113.1, the Office of Zoning sent notice of the hearing to: the Applicant; all individuals and entities owning property within 200 feet of the Subject Property; Advisory Neighborhood Commission ("ANC") 2F, the ANC serving the area in which the Subject Property is located; and the Office of Planning ("OP"). The Applicant posted notice of the application and hearing at the Subject Property and timely submitted an affidavit to the Board confirming the posting.

Party Status. The Applicant and ANC 2F were automatically parties to this proceeding. RG-1101 K LLC, which owns the property at 1101 K Street, N.W., adjacent to the Subject Property, requested party status on December 5, 2014. At the December 9, 2014 hearing, the Board denied that request as untimely because it was filed less than 14 days before the hearing. (*See* 11 DCMR § 3106.2.) Because there was evidence that the Applicant had contacted RG-1101 K LLC's property manager as early as January 6, 2014, regarding the proposed project,

[1] In its prehearing statement, Exhibit 28, the Applicant also sought a special exception under § 411.11 for the requirements for roof structures under § 770.6. However, the Applicant subsequently modified the proposed project and withdrew its request for that relief.

the Board found that there was not good cause to waive the 14-day filing deadline.

The Applicant's Case. The Applicant was represented by Meridith H. Moldenhauer Esq., of Griffin, Murphy, Moldenhauer & Wiggins, LLP; Fred Hill testified on behalf of the Applicant; Tim Kearney testified on behalf of the Applicant's architect, Alliance Architecture; Demetri Koutrouvelis testified on behalf of the Applicant's real estate broker, Savills Studley Commercial Real Estate; and Lyle Jackson testified on behalf of the Applicant's financial broker, Aksoylu Properties, LLC.

ANC 2F. ANC 2F filed a letter and resolution dated November 10, 2014, indicating that, at a regularly scheduled and properly advertised meeting on November 5, 2014, at which a quorum was present, the ANC voted unanimously in support of the application. (Exhibit 26.)

OP Report. OP submitted a report dated December 2, 2014, recommending approval of the rear yard and parking relief and denial of the requested FAR. (Exhibit 29.) OP stated that the Applicant had established that the lot is subject to an exceptional situation in that it is exceptionally small — only 1,250 square feet in area — and cannot be combined with another lot because the remainder of Square 316 is already fully developed. OP further stated that the Applicant had demonstrated a practical difficulty in complying with parking and rear yard requirements. With respect to parking, OP stated that the shallowness of the site significantly impacts the ability of a vehicle to turn into the Subject Property and the impossibility of constructing a ramping system for below-grade parking. As to the 15-foot rear yard requirement, OP stated that providing such a rear yard would reduce the building depth to 37 feet, resulting in floors where core requirements would occupy between one-half and two-thirds of the floorplate. With respect to FAR, OP concluded that the Applicant demonstrated that the small lot size combined with the necessarily high core factor did pose challenges for developing a modern office building on the site. However, OP believed that the Applicant had not demonstrated a practical difficulty that would account for the full FAR relief requested. Although OP found that granting the relief requested for parking and rear yard requirements would not cause substantial detriment to the public good or substantial harm to the Zoning Regulations, OP concluded that granting FAR relief would. First, OP argues that a failure to prove the need for all of the FAR relief requested proves that the integrity of the Zoning Regulations will be impaired. OP further noted that the Applicant had not yet purchased the transferrable development rights ("TDRs") that would provide an additional 0.5 FAR for a by-right 8.5 FAR total and that its failure to do so undermined the TDR process.

DDOT Report. By memorandum dated December 2, 2014, DDOT indicated that it "supports the lack of parking provision in this area due to the close proximity to transit, provided bicycle storage, and the provision for vehicular parking need in the nearby garages," subject to the Applicant implementing Transportation Demand Management ("TDM") measures, as specified below. (Exhibit 30.)

Persons in Opposition. RG-1101 K LLC, represented by counsel, testified in opposition to the application, contending that the proposed project would block windows at its property, thereby impacting the light and air. 12th & L Street LTD, the owner of 1100 L Street, N.W., also filed a letter in opposition asserting that the proposed project would negatively affect the light and air available to its property.

FINDINGS OF FACT

The Subject Property and Surrounding Area.

1. The Subject Property is located at 1017 12th Street, N.W., Washington, D.C.

2. The Subject Property has approximately 25 feet of frontage along 12th Street, N.W. and a depth of approximately 50.5 feet, resulting in a lot area of approximately 1,262 square feet.

3. The Subject Property is located roughly two and a half blocks from the Walter E. Washington Convention Center and the CityCenterDC mixed-use development.

4. Square 316 is a small, split-zoned square bounded by L Street, N.W. to the north, 11th Street, N.W. to the east, K Street, N.W. to the south, and 12th Street, N.W. to the west.

5. Square 316 contains only three lots. In addition to the Subject Property there are two large, L-shaped lots, both of which have over 28,000 square feet of lot area. The two other lots contain large, roughly 10-story office buildings.

6. The Subject Property is located within the Downtown Development ("DD") Overlay and C-2-C Districts. The site is also located within a DD housing priority area.

7. The C-2-C District "is designed to serve commercial and residential functions similar to the C-2-A District, but with higher density residential and mixed uses." (11 DCMR § 720.9.)

8. The purpose of the DD Overlay is "to help accomplish the land use and development policies of the Comprehensive Plan relating to the affected Downtown sectors." (11 DCMR § 1700.2.)

9. The Subject Property is presently improved with a vacant rowhouse used most recently for office use.

10. The Subject Property is not located within any historic district, and the existing building on the Subject Property is not listed on the D.C. Inventory of Historic Sites.

The Applicant's Project and Zoning Requirements.

11. The Applicant proposes to replace a long vacant, underutilized structure with an office building.

12. The proposed office building will be nine stories tall, with a roof structure, and will retain much of the exterior of the existing structure.

13. The proposed development will also include covered and secure bicycle parking spaces.

14. The Applicant has proposed a TDM plan.

15. Under § 1706.4, a property within a housing priority area that is zoned DD/C-2-C is permitted a total FAR of 8.0, of which 4.5 FAR must be residential development that may be accounted for on site or through a combined lot development. Pursuant to § 1706.7(a)(1), this FAR limit can be increased by receiving up to 0.5 FAR worth of transferrable development rights "TDRs") from another DD housing priority area property.

16. The proposed project's total FAR is 9.62 FAR (9.0 FAR plus a roof structure of 0.62 FAR).

17. The permitted FAR, factoring in the roof structure, is 8.87 (8.0 FAR + 0.5 FAR TDR Bonus + 0.37 "bonus" for purposes of the roof structure).

18. Thus, the relief requested is 0.75 FAR (9.62 FAR proposed – 8.87 FAR permitted = 0.75 FAR deviation). Of that, 0.5 FAR is attributed to the building (9.0 FAR proposed – 8.5 FAR permitted) and 0.25 FAR is attributed to the roof structure (0.62 FAR proposed – 0.37 permitted).

19. Under § 774, the rear yard requirement is 15 feet.

20. The proposed structure, like the existing structure, has no rear yard. The Subject Property currently has a lot occupancy of 100%.

21. Absent relief from the rear yard requirement, the building's footprint would be required to be 25 feet by 35 feet, or 875 square feet.

22. Pursuant to § 2101.1, the parking requirement for an office use in the C-2-C District is one space for every 1,800 square feet above 2,000 square feet.

23. The proposed structure, devoted entirely to office use, requires six parking spaces.

Exceptional Circumstance.

24. The Subject Property is extremely small and very narrow, particularly relative to the other lots in Square 316 and other property located downtown.

25. The Subject Property is a "hold out" site from when the remainder of Square 316 was assembled to construct two large office buildings.

26. The Subject Property has remained vacant for approximately seven years.

27. The existing structure does not conform to the neighboring properties and is inconsistent with the Central Washington Area Element of the Comprehensive Plan.

Practical Difficulty.

28. Whereas a typical newly constructed office building of this type has a core factor ranging from 15% to 18%, the proposed project's core factor is approximately 45%.

29. Testimony and submissions presented by the Applicant demonstrate a financial hardship associated with development of the Subject Property. Based on land cost, construction budget, and monthly payments for mortgage principal, interest, taxes, and insurance, the estimated capitalization rate[2] for the Subject Property is projected to be 3.2 for a matter-of-right development or 4.2 with the requested variance relief. A February 2013 survey conducted by the commercial real estate services firm CBRE Group, Inc., indicates that the capitalization rate for stabilized, value-added real estate in the District of Columbia typically ranges from 5.5 to 7.5, much higher than the rate projected for the Subject Property. (Exhibit 38.)

30. The Subject Property, as improved, has no rear yard.

31. Reducing the already small footprint of the existing building would exacerbate problems associated with the building's high core factor, which would exist for any development on the Subject Property.

32. Underground parking at the facility would be an extremely inefficient use of space at an exorbitant cost-per-space. The Applicant's turning radius diagram illustrates the impact of the shallowness and narrowness of the Property on the ability to provide an adequate turning radius and ramping system. (Exhibit 13.)

[2] In the real estate industry, a capitalization rate (often referred to as a "cap rate") is the ratio of a property's annual net operating income to that property's underlying asset value, usually expressed as a percentage. For instance, if a property has an underlying value of $1,000,000 and it produces $100,000 in net income per year, the property has a capitalization rate of 0.10 or 10%.

33. The lot's shallow depth and narrow configuration make it impossible to construct an underground parking structure that could accommodate the required parking spaces, drive aisles, and access ramps.

34. Providing the required parking at grade also is not feasible, as it would require further reducing the already small footprint of the building.

No Detriment to the Public Good or Zone Plan

35. The proposed project revitalizes and adds to a long vacant, underutilized structure at the Subject Property with a productive use in a manner consistent with the surrounding properties on Square 316.

36. The impact of the project on adjacent properties will be minimal. (Exhibit 44.)

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07(g)(3), to grant variance relief where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (11 DCMR § 3103.2.)

The District of Columbia Court of Appeals has held that "an exceptional or extraordinary situation or condition" may encompass the buildings on a property, not merely the land itself, and may arise due to a "confluence of factors." *Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). The Court of Appeals has held that the economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases. *Gilmartin*, 579 A.2d at 1170–71 (also stating that "increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration.").

The Applicant is seeking a variance from the zoning regulations regarding FAR under § 1706, rear yard under § 774, and parking under § 2101.1. The Board concludes that the Applicant has met its burden of proof for the requested area variances.

Exceptional Circumstance.

The Board concludes that, based on a confluence of factors, an exceptional circumstance exists at the Subject Property. The Subject Property is an extremely small size and very narrow, particularly for a lot located downtown. The Subject Property is a hold out site from when the remainder of Square 316 was assembled to construct two large office buildings. The Subject Property has remained vacant for approximately seven years. The existing structure does not conform to the neighboring properties and is inconsistent with the Central Washington Area Element of the Comprehensive Plan.

Practical Difficulty.

The Board concludes that the confluence of these exceptional and extraordinary conditions creates practical difficulties for the Applicant in complying with the requirements regarding FAR, rear yard, and parking.

Due to the small size and narrowness of the Subject Property, the resulting high core factor, and the arrangement of other large office buildings on Square 316, strict application of the FAR requirement would result in a practical difficulty. The lot's dimensions result in an extremely inefficient structure and design difficulties. While a typical newly constructed office building of this type has a core factor ranging from between 15% to 18%, the core factor in this instance is roughly triple that at approximately 45%. Further, the Applicant has demonstrated the financial hardship associated with matter-of-right development through a detailed financial analysis and witness testimony.

Likewise, strict application of the rear yard requirement would result in a practical difficulty. Complete relief from the rear yard requirement is necessary to allow a financially feasible project. The existing property has no rear yard. The Applicant has demonstrated that a rear yard of any kind would further reduce the building's already small footprint and would exacerbate problems associated with the building's high core factor.

Lastly, strict application of the parking requirement would result in a practical difficulty. Underground parking at the facility would be an extremely inefficient use of space and would be at an exorbitant cost-per-space. The lot's shallow depth and narrow configuration make it impossible to construct an underground parking structure that could accommodate the required parking spaces, drive aisles, and access ramps. Providing the required parking at grade also is not feasible because it would require further reducing the already exceptionally small footprint of the building.

No Detriment to the Public Good or Zone Plan.

The Board concludes that the proposed project will not result in substantial detriment to the public good or substantial impairment of the intent, purpose, and integrity of the zone plan.

The proposed project replaces a long vacant, underutilized structure at the Subject Property with a productive use in a manner consistent with the surrounding properties on Square 316. The Subject Property, a hold out from when the remaining lots on the square were assembled for construction of large office buildings, remains as an odd outlier sandwiched between two very large, 10-story office buildings in the DD/C-2-C District. This unique circumstance does not establish a precedent or otherwise negatively impact the zone plan or public good. Due to the Subject Property's odd history and unique factors discussed above, there is little impact to the zone plan. RG-1101 K LLC, the owner of the adjacent property at 1101 K Street, N.W. provided testimony and written submissions in opposition to the proposed project, including an analysis of the rental revenue that it would lose due to the impact of the project on a portion of its window space. (Exhibit 43A.) While several windows are being covered in the office building at 1101 K Street, N.W., the Applicant has demonstrated through detailed evidence, both qualitative and quantitative, that the impact will not rise to the level of a substantial detriment to the adjacent property owners or the public good. Accordingly, the Board does not find the financial analysis submitted by RG-1101 K LLC to be persuasive.

Further, granting the requested parking relief would not result in a substantial detriment to the public good or zone plan, particularly in light of the Property's close proximity to the Metro Center Metrorail station. The Applicant will implement TDM measures, as detailed below, to promote the use of non-automotive transportation. Furthermore, the availability of a variety of transportation options, particularly bike-share and car-share services and Metrorail, reduces the need for the employees who will work at the Subject Property to commute by car.

Great Weight.

In deciding to grant or deny applications for zoning relief, the Board is required to give "great weight" to OP's recommendation. (D.C. Official Code § 6-623.04.) Pursuant to this statutory duty, the Board must demonstrate in its findings that it considered OP's views and must provide a reasoned basis for any disagreement with it. *Glenbrook Rd. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 605 A.2d 22, 34 (D.C. 1992) (internal citation omitted).

Here, OP stated that the Applicant had established that the lot is subject to an exceptional situation in that it is exceptionally small and cannot be combined with another lot. OP further agreed that the Applicant had demonstrated a practical difficulty in complying with parking and rear yard requirements. Although OP acknowledged a degree of practical difficulty in complying with the maximum permitted FAR, OP concluded that the Applicant had not demonstrated that all of the additional FAR was needed nor had the Applicant purchased TDRs to provide 0.5 FAR of the needed relief. OP also found that granting the relief requested for parking and rear yard requirements would not cause substantial detriment to the public good or substantial harm to the Zoning Regulations, but that granting FAR relief would. For the reasons discussed above, the Board finds OP's recommendation persuasive in so far as it recommends approval of relief for rear yard and parking, but unpersuasive as to the issue of FAR. Contrary to the Office of Planning's contention, the Board finds that the Applicant has fully justified the

degree of FAR relief requested. Further, the Board disagrees that granting FAR relief will result in detriment to the public good or impairment of the zone plan. OP's conclusion arises from its mistaken belief that the Applicant has failed to make its practical difficulty case in full. As noted, the Board has concluded otherwise. Further, OP's concern that the Applicant has not yet purchased TDRs is unfounded. In fact, the Applicant argument that the FAR relief is reasonable assumes that such TDRs will be purchased. (Exhibit 44, p. 9.) However, it is understandable that the Applicant would not want to purchase TDR (which alone would not result in a viable project) until it knew that the full FAR needed would be available.

The Board must also give "great weight" to the issues and concerns that the affected ANC raises in its written report. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)).) In this case, the ANC voted unanimously in support of the application. To the extent that the ANC is recommending that the Board grant the application, the Board finds this advice to be persuasive.

CONCLUSION

For the reasons discussed above, the Board concludes that the Applicant has met the burden of proof for the requested variance relief.

Accordingly, it is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT** to the **APPROVED FULL ARCHITECTURAL PLANS AT EXHIBIT 44A AND FAR DIAGRAM AT EXHIBIT 44B**, and the following **CONDITIONS:**

1. The Applicant shall install at least two short-term bicycle parking spaces in public space, conditional on DDOT approval of their location. The exact location of the short-term bicycle parking spaces will be determined during the public space permitting process;

2. The Applicant shall provide preloaded $50 SmarTrip cards for each employee who does not have them (one time per employee);

3. The Applicant shall provide a monthly stipend of reasonable amount for transit use for all employees who use transit;

4. The Applicant shall enroll in the SmartBenefits Transit Benefits Program; and

5. The Applicant shall specify a TDM Leader who will serve as a liaison for employees seeking transportation options near the building.

VOTE: **3-0-2** (Lloyd L. Jordan, Marnique Y. Heath, and Jeffrey L. Hinkle to Approve; S. Kathryn Allen and Marcie I. Cohen, not present, not voting)

BZA APPLICATION NO. 18878
PAGE NO. 10

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: September 9, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. 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.

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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION
ZONING COMMISSION ORDER NO. 05-36K
Z.C. Case No. 05-36K
Toll DC II LP
(Minor Modification to an Approved PUD at Square 749, Lots 826 and 827)
July 27, 2015

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on July 27, 2015. At the meeting, the Commission considered an application from Toll DC II LP ("Applicant") for a minor modification to an approved planned unit development and related map amendment. (See Z.C. Order Nos. 05-36 through 05-36J, collectively, the "PUD.") The modification was requested to allow façade treatment refinements to the Phase II portion of the approved PUD. Because the modification was deemed minor, a public hearing on the request was not required pursuant to the Commission's Consent Calendar procedures, 11 DCMR § 3030. The Commission further determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. By Z.C. Order No. 05-36, effective October 10, 2006, the Commission granted first-stage PUD approval and a related Zoning Map amendment to allow for the construction of a two-phased apartment development around an outdoor central plaza. The PUD approval provided for a total of approximately 712 dwelling units with ground-floor retail and other non-residential uses. Phase I contemplated approximately 212 dwelling units, and Phase II was planned to provide approximately 500 units. The two phases were designed to be constructed as a single building for zoning purposes, with above-grade connections located on various upper-level corridors. As part of the original Order, the Commission granted consolidated approval for Phase I of the PUD and first-stage approval for Phase II. Construction of the first phase of the development, located on that portion of Record Lot 67 known for tax and assessment purposes as Tax Lot 828, is complete and is now owned and operated by an entity known as Union Place Phase I, LLC, which a separate entity from the Applicant.

2. By Z.C. Order No. 05-36A, effective November 14, 2008, the Commission granted second-stage approval for Phase II of the PUD, to be located on that portion of Record Lot 67 known for assessment and taxation purposes as Lots 826 and 827.

3. In Z.C. Order Nos. 05-36B and 05-36C, the Commission approved minor modifications to Phase I of the PUD, to restrict access for safety purposes to a small portion of the outdoor plaza to project residents only (Z.C. Order No. 05-36B), and to modify the affordable housing proffer to allow prospective tenants to utilize more than 30% of household expenses for payment of rent in order to accommodate arts professionals (Z.C. Order No. 05-36C).

4. The Commission granted time extensions for Phase II of the PUD in Z.C. Order Nos. 05-36D and 05-36F, such that a building permit application for Phase II would have to be filed by November 14, 2014 and construction commence by November 14, 2015.

5. In Z.C. Order No. 05-36E, the Commission granted the Applicant flexibility to construct Phase II in two sub-phases (Phase II-A and Phase II-B), and modified the PUD's parking requirement.

6. In Z.C. Order No. 05-36G, the Commission granted a modification to include within the PUD approximately 5,300 square feet of additional land area in the northeast corner of Square 749, to permit construction of a freestanding seven-story apartment building consisting of 41 dwelling units.

7. In Z.C. Order No. 05-36H, the Commission granted a minor modification to allow the Phase I building and the Phase II building to be constructed, occupied, and operated as separate buildings on a single record lot.

8. In Z.C. Order No. 05-36I, the Commission granted a modification regarding Phase II only, to allow the Applicant to make certain refinements to the Phase II building's layout, façade treatment, and parking and loading operations.

9. In Z.C. Order No. 05-36J, the Commission granted another time extension for Phase II so that in a building permit application for Phase II-A must be filed by November 14, 2015, and construction must start no later than November 14, 2016. Further, a permit application for Phase II-B must be filed not later than two years following the date of the issuance of a final certificate of occupancy for the residential portion of Phase II-A, with construction to commence within one year thereafter.

10. The present application requests a minor modification to allow the Applicant to make certain minor revisions to the façade treatments of the Phase II building. The revisions include: (i) reducing the four-color brick scheme down to two, with slightly darker tones of red-brown and grey; (ii) enlarging window heights to extend almost all windows up to underside of slab; (iii) adding more glass above the entrance to the passageway from K Street to the central courtyard; (iv) reducing contrast of colors of cast stone window headers and sill and surrounding brick; and (v) reducing cornice profiles.

11. The Applicant's primary goal of the minor façade treatment modifications was to improve the Phase II building's response to the surrounding neighborhood, including the more modern architecture seen elsewhere in the North of Massachusetts Avenue (NoMA) area, the brick of the surrounding townhouses, and the traditional elements of the warehouse/industrial buildings in the area, consistent with comments received from the Commission in 2014 as part of the modification approval in Z.C. Order No. 05-36I.

12. The requested minor modification will have no detrimental impact upon the PUD. Aside from the minor modification to the approved plans for the PUD of revising the colors and certain minor façade treatments, the overall project that was approved has not changed in any fashion. The use, height, density, and gross floor area of the PUD have not changed. The overall design and programming of the PUD has not changed, and the project amenities and community benefits of the project, including the affordable housing commitment, likewise have not changed and will continue to be provided as part of the PUD. This minor modification is solely requested by the Applicant for the reasons referenced in Findings of Fact Nos. 10 and 11.

13. The Office of Zoning referred this matter to the Office of Planning ("OP") for analysis and recommendation. By memorandum dated July 17, 2015 (Exhibit [Ex."] 5), OP stated its support for the Applicant's request for a minor modification to the design of the Phase II building.

14. Advisory Neighborhood Commission ("ANC") 6C, the ANC in which this project is located, submitted a letter in support of the application. The letter noted that at ANC 6C's duly noticed, regularly scheduled monthly meeting on July 8, 2015, with a quorum of five out of six commissioners and the public present, the ANC voted unanimously 5-0 to support the modification.

15. On July 27, 2015, at its regularly scheduled public meeting, the Commission reviewed the modification request as a Consent Calendar matter and granted approval of the modification. The Commission finds that the approval of the modification is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission concludes that the proposed modification is minor and is consistent with the intent of the previously approved PUD. Further, the Commission concludes that approval of the requested modification is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and Zoning Map. Approval of the modification to the approved PUD is not inconsistent with the District of Columbia Comprehensive Plan (10-A DCMR). Further, the modification does not impact material elements of the PUD, including permitted use, height, gross floor area, or project amenities or benefits.

The Commission is required by § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of OP. OP recommended approval of this application as a minor modification, and the Commission concurs in this recommendation

The Commission is also required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 6C. In this case, the Commission's find's ANC 6C's support of the modification to offer persuasive advice.

DECISION

In consideration of the Findings of Fact and Conclusions of Law provided herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a modification to the PUD in Square 749, Lots 826 and 827.

Therefore, Condition No. 1 established in Z.C. Order No. 05-36A, granting second-stage approval for the Phase II building, having been amended by Z.C. Order Nos. 05-36E, 05-36F, 05-36H, 05-36I, and 05-36J, is hereby further amended as follows with additional text to the most recent version shown in bold and underlined text:

1. The PUD shall be developed in accordance with the architectural plans and elevations dated June 2, 2008 and marked as Exhibit 38 of the record in Z.C. Case No. 05-36A, as may be modified by the revised floor plans shown in the plans marked as Exhibit C to Exhibit 1 of the record in Z.C. Case No. 05-36H, which plans provide no above-grade building connections between Phase I and Phase II of the PUD, and the plans and elevations dated October 30, 2014 and marked as Exhibit 24 of the record in Case No. 05-36I, as supplemented by the plans and elevations dated December 15, 2014 marked as Exhibit 33 of the record in Z.C. Case No. 05-36I, **and as supplemented by the elevations dated July 9, 2015, marked as Exhibit 2B of the record in Z.C. Case No. 05-36K** (collectively, the "Final Plans") and as modified by the guidelines, conditions, and standards of this Order. The PUD may be constructed pursuant to the phasing plan shown in the plans marked as Exhibit 2 of the record in Z.C. Case No. 05-36E. The Applicant shall have the flexibility to modify 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, and bathrooms, provided that the variations do not change the exterior configuration of the building;

    b. 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;

    c. To make minor refinements to exterior details and dimensions including balcony enclosures, belt courses, sills, bases, cornices, railing and trim, or any other

changes to comply with the Construction Codes or that are otherwise necessary to obtain a final building permit;

d. To modify the design of all landscaping and other streetscape improvements located in public space in order to secure any necessary permits from the District Department of Transportation;

e. To increase or decrease the overall number of residential units by no more than five percent provided that the percentage of residential gross floor area designated for affordable units shall be no less than 10% of the total gross floor area devoted to residential units and shall be provided consistent with the Commission's approval in Z.C. Corrected Order No 05-36;

f. To vary the number and location of parking spaces in the underground garage, provided that the total number of parking spaces provided in Phase II is no less than 240 vehicle spaces and 175 bicycle spaces; and

g. To provide loading facilities within Phase II as provided in the Final Plans, which include one 30-foot-deep loading berth, one 30-foot-deep service delivery space, and one 200-square-foot loading platform.

On July 27, 2015, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, this Order was **APPROVED** and **ADOPTED** by the Zoning Commission at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and adopt; Marcie I. Cohen, not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.8 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register* on September 18, 2015.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 15-22
(301 FL Manager, LLC – Consolidated PUD & Related Map Amendment @ Square 722N, Lot 803)
September 9, 2015

THIS CASE IS OF INTEREST TO ANC 6C and 5D

On September 4, 2015, the Office of Zoning received an application from 301 FL Manager, LLC (the "Applicant") for approval of a consolidated planned unit development ("PUD") and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lot 803 in Square 722N in northeast Washington, D.C. (Ward 6), also known as 301 Florida Avenue, N.E. The property is zoned C-M-1. The Applicant proposes a PUD-related map amendment to rezone the property, for the purposes of this project, to C-3-C.

The Applicant proposes to construct a new mixed-use building of residential and retail uses. It will have a density of approximately 7.57 floor area ratio ("FAR") and a maximum height of 101 feet (eight stories). The project will not have any off-street parking and will be constructed with LEED points equivalent to at least LEED-Gold.

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.