

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council schedules a public roundtable on Proposed Resolution 22-582, Resources for the Future Inc., Revenue Bonds Project Approval Resolution of 2017
- Department of Health announces funding availability for the D.C. Colorectal Cancer Control Program
- Department of Housing and Community Development announces funding availability for the Housing Preservation Fund
- DC Public Schools proposes updates to requirements for maintaining and returning employees and students to school after being diagnosed with a communicable disease
- Office of the State Superintendent of Education announces funding availability for the Fiscal Year 2018 Healthy Tots Wellness Grant
- Office of the State Superintendent of Education amends funding availability for the Fiscal Year 2018 McKinney-Vento Homeless Education Grant

DISTRICT OF COLUMBIA REGISTER

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AN ACT
D.C. ACT 22-170

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 24, 2017

To amend the Animal Control Act of 1979 to clarify what constitutes the proper treatment of animals, update prohibited behaviors toward animals, update penalties for violating provisions of the act, and redesignate existing sections for organizational purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Standard of Care for Animals Amendment Act of 2017”.

Sec. 2. The Animal Control Act of 1979, effective October 18, 1979 (D.C. Law 3-30; D.C. Official Code § 8-1801 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 8-1801) is amended to read as follows:

“Sec. 2. Definitions.

“For the purposes of this act, the term:

“(1) “Abandon” means to desert, forsake, or give up an animal without having secured another owner or custodian for the animal or having transferred the animal to the Animal Care and Control Agency.

“(2) “Adequate care” means the responsible practice of animal husbandry, handling, confinement, protection, transportation, treatment, and, when necessary, euthanasia, appropriate for the age, species, condition, size, and type of the animal, and the provision of veterinary care when needed to prevent suffering, impairment of health, or the treatment of illness or injury.

“(3) “Adequate feed” means the provision of and access to food that is sufficient in quantity, prepared and provided in a manner so that the animal can consume it, and provided in a manner sanitary for the animal.

“(4)(A) “Adequate shelter” means the provision of and access to shelter that is safe and protects each animal from injury, rain, sleet, snow, hail, the adverse effects of heat or cold, and physical suffering, and that is of a size sufficient for the animal to stand up and turn around.

“(B) For a dog confined outside, the term “adequate shelter” shall additionally mean that:

“(i) When the temperature is at or below 40 degrees Fahrenheit, the dog has access to a shelter that has an entrance covered by a flexible wind-proofing material or self-closing door, that contains a platform for the dog at least 4 inches off the ground, and that

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contains dry bedding, which shall consist of an insulating material that does not retain moisture, such as straw, and is of a sufficient depth for the dog to burrow; and

“(ii) When the temperature is at or above 80 degrees Fahrenheit, the dog has access to a shelter shaded by trees, a roof, a tarp, or a tarp-like device.

“(5)(A) “Adequate space” means sufficient space to allow each animal to easily stand, sit, lie, turn, and make all other normal body movements in a comfortable, normal position for the animal, while allowing the animal to interact safely with other animals.

“(B) Where freedom of movement would endanger or harm the animal, temporarily and appropriately restricting movement of the animal according to veterinary standards for the species is considered the provision of adequate space.

“(6) “Adequate water” means the provision of and access to clean, fresh, potable water, provided in a suitable manner for proper hydration for the age, species, condition, size, and type of each animal.

“(7) “Animal Care and Control Agency” means the District of Columbia humane organization the Mayor contracts with to manage animal care and control.

“(8) “Animal shelter” means a privately- or government-owned facility established for the impoundment of stray, diseased, dangerous, sick, injured, abused, neglected, unwanted, abandoned, orphaned, lost, or otherwise displaced animals, with the intent to care for, quarantine, return to an owner, place for adoption, or euthanize the animals.

“(9)(A) “At large” means any animal found off the premises of its owner or custodian and not leashed, tethered, or otherwise under adequate means of control of a person capable of physically restraining it.

“(B) The term “at large” shall not include a dog in a dog park pursuant to section 11b.

“(C) The term “at large” shall not include cats.

“(10) “Custodian” means a person who has assumed responsibility for the care and well-being of an animal in place of the animal’s owner with the owner’s knowledge and permission.

“(11) “Dangerous animal” means an animal that because of specific training or demonstrated behavior threatens the health or safety of the public. The term “dangerous animal” shall not include a dangerous dog as defined in section 2(1) of the Dangerous Dog Amendment Act of 1988, effective October 18, 1988 (D.C. Law 7-176; D.C. Official Code § 8-1901(1)).

“(12) “Dog park” means an off-leash dog exercise area officially established pursuant to section 11b.

“(13) “Extreme weather” means temperatures below 32 degrees Fahrenheit or above 90 degrees Fahrenheit.

“(14) “Leash” means a line held by a person on one end that is for leading or restraining an animal.

“(15) “Mayor” means the Mayor of the District of Columbia or his or her designee.

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“(16) “Owner” means a person in the District of Columbia who purchases or keeps an animal in temporary or permanent custody, except as provided in section 5.

“(17) “Tether” means a line connected to a stationary object by which an animal is fastened so as to restrict its range of movement.

“(18) “Vaccinated” means protected by a documented inoculation that the Mayor, consistent with the practices of veterinary medicine, determines is currently effective.”.

(b) Section 3 (D.C. Official Code § 8-1802) is amended as follows:

(1) Subsection (a) is amended by striking the phrase “; provided, that only a sworn member of the Metropolitan Police Department may serve a notice of violation with respect to section 9(a) outside the premises of the animal shelter”.

(2) Subsection (b) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

“(1) Pursuant to this act, issue fines and citations for violations and deliver all fees collected to the Mayor.”.

(B) Paragraph (4) is amended by striking the period and inserting a semicolon in its place.

(C) New paragraphs (5) and (6) are added to read as follows:

“(5) Respond to all animal calls and emergencies in the District; and

“(6) Perform any other duties the Mayor designates that are consistent with the provisions of this act.”.

(c) Section 4(b) (D.C. Official Code § 8-1803(b)) is amended to read as follows:

“(b) The Mayor shall provide a free rabies vaccination clinic at least annually.”.

(d) Section 5 (D.C. Official Code § 8-1804) is amended as follows:

(1) Subsection (b) is amended by striking the phrase “his dog wears a collar” and inserting the phrase “his or her dog wears a collar or harness” in its place.

(2) Subsection (e-1) is amended to read as follows:

“(e-1) \$2 of each fee collected pursuant to subsection (e) of this section shall be deposited into the Animal Education and Outreach Fund, established by section 11a. Remaining money from the fees collected shall be deposited in the General Fund of the District of Columbia.”.

(3) Subsection (h) is amended to read as follows:

“(h) Any license issued pursuant to this section shall be issued by the Department of Health. The Department of Health may delegate this function to any veterinarians licensed in the District of Columbia.”.

(4) Subsection (j) is repealed.

(e) Section 10 (D.C. Official Code § 8-1809) is redesignated as section 5a.

(f) The newly designated section 5a is amended as follows:

(1) Strike the word “mammals” wherever it appears and insert the word “animals” in its place.

(2) Subsection (a) is amended by striking the phrase “permit: EXCEPT,” and inserting the phrase “permit; provided,” in its place.

(3) Subsection (f) is amended to read as follows:

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“(f) A holder of an animal hobby permit shall provide his or her animals with adequate care, adequate feed, adequate shelter, adequate space, adequate water, and appropriate veterinary care.”.

(4) Subsection (g) is amended by striking the word “mammal” and inserting the word “animal” in its place.

(g) Section 6 (D.C. Official Code § 8-1805) is amended as follows:

(1) Subsection (a) is amended by striking the phrase “section 10.” and inserting the phrase “section 5a.” in its place.

(2) Subsection (g) is amended to read as follows:

“(g)(1) The Mayor shall not release an animal unless it has received a rabies vaccination in accordance with the Centers for Disease Control and Prevention’s rabies vaccination schedule.

“(2) Paragraph (1) of this subsection shall not apply to puppies or kittens under 4 months of age.”.

(h) Section 7 (D.C. Official Code § 8-1806) is amended by striking the phrase “Redemption by” in the heading and inserting the phrase “Release to” in its place.

(i) Section 9 (D.C. Official Code § 8-1808) is amended to read as follows:

“Sec. 9. Prohibited Conduct.

“(a)(1) An owner or custodian shall not allow his or her animal to go at large.

“(2) If a dog injures a person while at large, lack of knowledge of the dog’s vicious propensity standing alone shall not absolve the owner from a finding of negligence.

“(b) A person shall not knowingly and falsely deny ownership or custodianship of an animal.

“(c)(1) An owner or custodian shall not leave his or her animal outdoors without human accompaniment or adequate shelter for more than 15 minutes during periods of extreme weather, unless the age, condition, and type of each animal allows the animal to withstand extreme weather.

“(2) Paragraph (1) of this subsection shall not apply to cats.

“(d) A person shall not remove the license of a dog without the permission of its owner.

“(e) A dog shall not be permitted on any school ground or on any public recreation area, other than a dog park, unless the dog is on a leash, tether, or otherwise under adequate means of control of a person capable of physically restraining it.

“(f)(1) A person shall not separate a puppy or a kitten from its mother until the puppy or kitten is at least 6 weeks of age.

“(2) Paragraph (1) of this subsection shall not apply in cases where a mother poses a danger to its offspring.

“(g) A person shall not give, sell, or offer for sale a puppy or kitten under 6 weeks of age, unless the puppy’s or kitten’s mother is given or sold to the same person as the puppy or kitten.

“(h)(1) A person shall not change the natural color of a baby chicken, duckling, other fowl, or rabbit.

“(2) A person shall not sell or offer for sale a baby chicken, duckling, other fowl, or rabbit that has had its natural color changed.

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“(i) A person shall not sell or offer for sale a rabbit under the age of 16 weeks or a chick or duck under the age of 8 weeks except for agricultural or scientific purposes.

“(j)(1) Except as provided in this subsection, a person shall not import into the District, possess, display, offer for sale, trade, barter, exchange, or adoption, or give as a household pet, any living member of the animal kingdom, including those born or raised in captivity, except the following:

“(A) Domestic dogs, excluding hybrids with wolves, coyotes, or jackals;

“(B) Domestic cats, excluding hybrids with ocelots or margays;

“(C) Domesticated rodents and rabbits;

“(D) Captive-bred species of common cage birds;

“(E) Non-venomous snakes, fish, and turtles, traditionally kept in the home for pleasure rather than for commercial purposes;

“(F) Ferrets; and

“(G) Racing pigeons, when kept in compliance with permit requirements.

“(2) A person may offer any of the species enumerated in paragraph (1) of this subsection to a public zoo, park, or museum for exhibition purposes.

“(3) This section shall not apply to federally licensed animal exhibitors; provided, that the Mayor shall retain the authority to restrict the movement of any prohibited animal into the District and the conditions under which those movements are made.

“(4) The Mayor may allow a licensed wildlife rehabilitator, licensed veterinarian, or licensed animal shelter to maintain an animal prohibited in this subsection for treatment or pending appropriate disposition.

“(k)(1) A person shall not sponsor, promote, train an animal to participate in, contribute to the involvement of an animal in, or attend as a spectator, any activity or event in which any animal engages in unnatural behavior, is wrestled or fought, mentally or physically harassed, or displayed in such a way that the animal is struck, abused, or mentally or physically stressed or traumatized, or is induced, goaded, or encouraged to perform or react through the use of chemical, mechanical, electrical, or manual devices, in a manner that will cause, or is likely to cause, physical or other injury or suffering.

“(2) The prohibitions set forth in paragraph (1) of this subsection shall apply to any event or activity at a public or private facility or property, and are applicable regardless of the purpose of the event or activity and whether a fee is charged to spectators of the event or activity.

“(l)(1) An owner or custodian of a dog shall not direct, encourage, cause, allow, aid, or assist that dog to threaten, charge, bite, or attack a person or other animal, except that an owner or custodian may keep a properly trained dog on private property to defend the property and its occupants from intruders, and may order a dog to defend a person under attack.

“(2) Paragraph (1) of this subsection shall not apply to dogs that work for the Metropolitan Police Department or any other law enforcement agency.

“(m) A person shall not display, exhibit, or otherwise move animals in the District as part of a circus, carnival, or other special performance or event, without first obtaining a permit,

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issued by the Mayor, that governs the care and management of the animals.

“(n) An owner or custodian shall not neglect to provide his or her animal with adequate care, adequate feed, adequate shelter, adequate space, and adequate water.

“(o) A person shall not take actions that intentionally harm, or that the person should know are likely to cause harm to, an animal.

“(p)(1) An owner or custodian shall not abandon an animal in his or her possession.

“(2) An owner who transfers ownership of an animal or releases the animal to the Animal Care and Control Agency shall not be liable for abandonment.”.

(j) Section 9a (D.C. Official Code § 8-1808.01) is redesignated as section 11b.

(k) A new section 9b is added to read as follows:

“Sec. 9b. Animals Left in Vehicles.

“(a) An owner or custodian shall not leave an animal alone in a vehicle in such a way as to endanger the animal’s health or safety.

“(b) After making a reasonable attempt to contact the owner or custodian, an animal control officer, firefighter, or law enforcement officer may use reasonable force to remove the animal from the vehicle whenever it appears that the animal’s health is endangered; provided, that no attempt to contact the owner or custodian is required if the animal is in immediate danger or appears in distress.

“(c) Following an animal’s removal from a vehicle by an animal control officer, firefighter, or law enforcement officer, the animal shall be impounded and medical care shall be provided if needed. A written notice shall be left attached to the vehicle identifying the responding animal control officer, firefighter, or law enforcement officer, and providing a phone number, time, date, and the location where the animal is being held.

“(d)(1) Any person found in violation of subsection (a) of this section shall be responsible for all expenses incurred by the District in the care, medical treatment, and impound cost of the animal.

“(2) The District shall not be responsible for the:

“(A) Injury or death to an animal due to enforcement of subsections (b) and (c) of this section; or

“(B) Cost of any damage to a vehicle due to enforcement of subsections (b) and (c) of this section.”.

(l) Section 11 (D.C. Official Code § 8-1810) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase “Low cost” and inserting the phrase “Low-cost” in its place.

(2) Paragraph (2) is amended to read as follows:

“(2) An educational program for animal owners regarding pet care and safety, specifically in extreme weather conditions or emergencies, and the laws related to pet ownership.”.

(m) A new section 11a is added to read as follows:

“Sec. 11a. Animal Education and Outreach Fund.

“(a) There is established as a special fund the Animal Education and Outreach Fund

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("Fund"), which shall be utilized in accordance with subsection (c) of this section.

"(b) Revenue deposited into the Fund shall come from \$2 of each fee paid for the application, issuance, or renewal of a dog license pursuant to section 5(e-1).

"(c) Money in the Fund shall be used for the following purposes:

"(1) Pursuant to section 11, providing for low-cost spay and neuter clinic services, and implementing an educational program for animal owners regarding pet care and safety, specifically in extreme weather conditions or emergencies, and the laws related to pet ownership; and

"(2) Appropriate overhead and administrative expenses related to the Fund.

"(d) The money deposited into the Fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time."

(n) Section 12 (D.C. Official Code § 8-1811) is amended to read as follows:

"Sec. 12. Penalty.

"(a) The Mayor, pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to set specific fine amounts for violations of each provision of this act; provided, that the fines shall not exceed the following amounts:

"(1) \$500 for each offense, except as otherwise provided in paragraph (2) of this subsection.

"(2) \$1000 for each offense for violations of section 9(n), (o) or (p)(1).

"(b) Fines issued under this section shall not preclude any other criminal or civil penalty or enforcement action provided by District law."

(o) Section 12a (D.C. Official Code § 8-1812) is repealed.

(p) A new section 13a is added to read as follows:

"Sec. 13a. Rules.

"The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act."

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

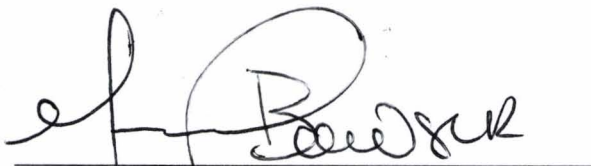
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as

ENROLLED ORIGINAL

provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
October 24, 2017

ENROLLED ORIGINAL

A RESOLUTION

22-253

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To appoint Ms. Marie Johns to the District of Columbia Judicial Nomination Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Judicial Nomination Commission Marie Johns Appointment Resolution of 2017”.

Sec. 2. The Council of the District of Columbia appoints:

Ms. Marie Johns
5117 Warren Place, N.W.
Washington, D.C. 20016
(Ward 3)

as a nonlawyer member of the District of Columbia Judicial Nomination Commission, established by section 434 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 796; D.C. Official Code § 1-204.34), for a term to end April 7, 2023.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the appointee, the chairperson of the District of Columbia Judicial Nomination Commission, and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF INTENT TO ACT ON NEW LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than **15 days**. Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at www.dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

BILLS

B22-538	<p>Watkins Alley Designation Act of 2017</p> <p>Intro. 10-31-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole</p>
B22-539	<p>Boris Nemtsov Plaza Designation Act of 2017</p> <p>Intro. 10-31-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole</p>
B22-552	<p>Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017</p> <p>Intro. 11-1-17 by Councilmember Silverman and referred to the Committee on Labor and Workforce Development</p>
B22-553	<p>Public Employee Relations Board Term Limit Amendment Act of 2017</p> <p>Intro. 10-31-17 by Councilmember Silverman and referred to the Committee on Labor and Workforce Development</p>

- B22-554 Adult Career Pathways Taskforce Expansion Amendment Act of 2017
Intro. 11-1-17 by Councilmember Silverman and referred to the Committee on Labor and Workforce Development
-
- B22-555 Closing of a Public Alley in Square 211, S.O. 17-26363, Act of 2017
Intro. 11-1-17 by Councilmember Evans and referred to the Committee of the Whole
-
- B22-557 Israel Baptist Church Way Designation Act of 2017
Intro. 11-1-17 by Councilmember McDuffie and referred to the Committee of the Whole
-
- B22-558 Community Health Investment Amendment Act of 2017
Intro. 11-3-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health
-
- B22-559 Dupont Circle Business Improvement District Amendment Act of 2017
Intro. 11-3-17 by Councilmember Evans and referred to the Committee on Finance and Revenue
-
- B22-560 Second Chance Amendment Act of 2017
Intro. 11-6-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety
-
- B22-561 Crummell School Site Surplus and Disposition Approval Act of 2017
Intro. 11-6-17 by Chairman Mendelson at the request of the Mayor and referred sequentially to the Committee on Transportation and the Environment and the Committee on Business and Economic Development
-

- B22-568 Washington Metropolitan Area Transit Authority Dedicated Funding Act of 2017
Intro. 11-7-17 by Councilmembers Evans, Grosso, R. White, Cheh, McDuffie, Gray, Bonds, Silverman, Nadeau, Todd, Allen, T. White, and Chairman Mendelson and referred to the Committee on Finance and Revenue
-
- B22-569 Oxygen Therapy Regulation Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Cheh and Bonds and referred to the Committee on Health
-
- B22-570 Rental Housing Affordability Re-establishment Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Bonds and Nadeau and referred to the Committee on Housing and Neighborhood Revitalization
-
- B22-571 Abortion Provider Non-Discrimination Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Grosso, Allen, R. White, Nadeau, Evans, and Bonds and referred to the Committee on Judiciary and Public Safety
-
- B22-572 Wage Garnishment Fairness Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Silverman, Evans, T. White, Grosso, Nadeau, and Bonds and referred to the Committee on Judiciary and Public Safety
-
- B22-573 Slumlord Deterrence Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Silverman, R. White, T. White, Nadeau, Grosso, and Bonds and referred to the Committee of the Whole
-
- B22-574 District of Columbia Paperwork Reduction and Data Collection Act of 2017
Intro. 11-7-17 by Councilmembers Nadeau, Grosso, and R. White and referred to the Committee on Government Operations
-

- B22-575 D.C. Cemetery Private Road and Parking Lot Exemption of Clean Water Fees Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Todd, Gray, and Evans and referred to the Committee on Transportation and the Environment
-
- B22-576 Energy-Efficiency and Water- Efficiency Sales Tax Holiday Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Todd, Nadeau, R. White, Bonds, Gray, and T. White and referred to the Committee on Finance and Revenue
-
- B22-577 Performing Arts Promotion Amendment Act of 2017
Intro. 11-7-17 by Councilmembers R. White, Nadeau, and Grosso and referred to the Committee on Finance and Revenue
-
- B22-578 Neighborhood Reinvestment from Advertising Regulation Amendment Act of 2017
Intro. 11-7-17 by Councilmembers R. White, Grosso, Bonds, Allen, and Silverman and referred to the Committee on Finance and Revenue
-
- B22-579 Helicopter Landing Pad Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Gray and Evans and referred to the Committee of the Whole
-
- B22-580 Veterans Specialty License Plate Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Gray, Evans, Allen, McDuffie, Silverman, Nadeau, Grosso, R. White, Bonds, T. White, and Todd and referred to the Committee on Transportation and the Environment
-
- B22-581 Transit Worker Protection Amendment Act of 2017
Intro. 11-7-17 by Councilmembers T. White, Bonds, Evans, and Gray and referred to the Committee on Judiciary and Public Safety
-

B22-582 District of Columbia Community Schools Incentive Amendment Act of 2017
Intro. 11-7-17 by Councilmembers T. White, Nadeau, and McDuffie and referred to the Committee on Education

B22-583 Opioid Abuse Prevention Amendment Act of 2017
Intro. 11-7-17 by Chairman Mendelson and referred to the Committee on Health

PROPOSED RESOLUTIONS

PR22-596 Director of the Department of Small and Local Business Development Kristi C. Whitfield Confirmation Resolution of 2017
Intro. 11-2-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development

PR22-597 Commission on Human Rights Clifton Lewis Confirmation Resolution of 2017
Intro. 11-2-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR22-598 Youth Apprenticeship Advisory Committee Dr. Madye Henson Confirmation Resolution of 2017
Intro. 11-2-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Labor and Workforce Development

PR22-599 Real Estate Commission David W. Forster Confirmation Resolution of 2017
Intro. 11-2-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization

PR22-600 Homeland Security Commission Joseph Green Confirmation Resolution of 2017
Intro. 11-2-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

- PR22-611 Fifth Street N.W. and I Street N.W. Term Sheet Amendment Approval Resolution of 2017
- Intro. 11-6-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development
-
- PR22-612 Commission on Aging Councilmember Anita Bonds Appointment Resolution of 2017
- Intro. 11-6-17 by Chairman Mendelson and referred to the Committee of the Whole
-
- PR22-616 Sense of the Council Calling on Congress to Continue Aiding Puerto Rico and the U.S. Virgin Islands on their Relief and Recovery Efforts Resolution of 2017
- Intro. 11-7-17 by Councilmembers Bonds, Grosso, R. White, Evans, Todd, Allen, T. White, Silverman, Nadeau, Cheh, McDuffie, Gray, and Chairman Mendelson and Retained by the Council
-

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT
NOTICE OF PUBLIC HEARING

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

**CHAIRPERSON ELISSA SILVERMAN
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT**

ANNOUNCE A PUBLIC HEARING ON

**B22-0552, THE “OFFICE OF EMPLOYEE APPEALS HEARING EXAMINER
CLASSIFICATION AMENDMENT ACT OF 2017”**

**B22-0553, THE “PUBLIC EMPLOYEE RELATIONS BOARD TERM LIMIT
AMENDMENT ACT OF 2017”**

**B22-0554, THE “ADULT CAREER PATHWAYS TASKFORCE EXPANSION
AMENDMENT ACT OF 2017”**

**Thursday, November 30, 2017, 10:00 a.m.
Hearing Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Councilmember Elissa Silverman, Chair of the Committee on Labor and Workforce Development announces a hearing on B22-552, the “Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017,” on B22-553, the “Public Employee Relations Board Term Limit Amendment Act of 2017,” and on B22-554, the “Adult Career Pathways Taskforce Expansion Amendment Act of 2017.” The hearing will be held at 10 a.m. on Wednesday, November 30, 2017, in Room 123 of the John A. Wilson Building.

The purpose of B22-0552, the “Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017,” is to classify the attorneys working in the Office of Employee Appeals as attorneys within the DCHR classification of employees, thereby aligning their compensation to be commensurate with their experience and with other attorneys in the District government. The Purpose of B22-553, the “Public Employee Relations Board Term Limit Amendment Act of 2017,” is to increase the number of consecutive terms a member of the Public Employee Relations Board may serve from two terms to three terms. This change would allow the retention of high quality Board members. The purpose of B22-554, the “Adult Career Pathways Taskforce Expansion Amendment Act of 2017,” is to require Council approval of mayoral nominees to the Adult Career Pathways Taskforce and to add three members to that body representing the business community in in-demand industries.

Those who wish to testify before the Committee are asked to contact Ms. Charnisa Royster at labor@dccouncil.us or (202) 724-7772 by 5:00 p.m. on Monday, November 27, 2017, to provide their name, address, telephone number, organizational affiliation and title (if any), as

well as the language of oral interpretation, if any, they require. Those wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Those representing organizations will have five minutes to present their testimony, and other individuals will have three minutes to present their testimony; less time may be allowed if there are a large number of witnesses.

If a witness is unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ms. Royster at labor@dccouncil.us or mailed to the Committee on Labor and Workforce Development, Council of the District of Columbia, Suite 115 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Thursday, December 14, 2017.

**Council of the District of Columbia
COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT AND
COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER KENYAN R. MCDUFFIE, CHAIRPERSON
COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT**

AND

**COUNCILMEMBER MARY CHEH, CHAIRPERSON
COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT**

JOINT PUBLIC ROUNDTABLE ON

**PR22-0455 - THE “MLK GATEWAY SURPLUS DECLARATION AND APPROVAL
RESOLUTION OF 2017”;**

**PR22-0456 - THE “MLK GATEWAY DISPOSITION APPROVAL RESOLUTION OF
2017”;**

**PR22-0555 –THE “TRUXTON CIRCLE PARCEL DECLARATION AND APPROVAL
RESOLUTION OF 2017”;** AND

**PR22-0556–THE “TRUXTON CIRCLE PARCEL DISPOSITION APPROVAL
RESOLUTION OF 2017”**

**Monday November 13, 2017, 11:00 a.m.
Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Monday, November 13, 2017 Councilmember Kenyan R. McDuffie, Chairperson of the Committee on Business and Economic Development, and Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a joint public roundtable to consider PR 22-0455, the “MLK Gateway Surplus Declaration and Approval Resolution of 2017”; PR 22-0456, the “MLK Gateway Disposition Approval Resolution of 2017”;

PR 22-0555, the “Truxton Circle Parcel Declaration and Approval Resolution of 2017”; and PR22-0556, the “Truxton Circle Parcel Disposition Approval Resolution of 2017”. The

roundtable will take place in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 11:00 a.m. The stated purpose of PR 22-0455 is to declare District owned real property known as MLK Gateway located at 1201-1215 Good Hope Road, S.E., and 1913 Martin Luther King, Jr., Avenue S.E. as no longer required for public purposes and allow for its disposition under a separate resolution pursuant to D.C. Official Code §10-801.

The stated purpose of PR 22-0456 is to approve the disposition of the property known as MLK Gateway located at 1201-1215 Good Hope Road, S.E., and 1913 Martin Luther King, Jr., Avenue S.E. pursuant to D.C. Official Code §10-801.

The stated purpose of PR 22-0555 is to declare District owned real property known as Truxton Circle Parcel located at 1520-1522 North Capitol Street, N.W. as no longer required for public purposes and allow for its disposition under a separate resolution pursuant to D.C. Official Code §10-801.

The stated purpose of PR 22-0556 is to approve the disposition of real property known as Truxton Circle Parcel located at 1520-1522 North Capitol Street, N.W. pursuant to D.C. Official Code §10-801.

The Committees invite the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee on Business and Economic Development via email at cautrey@dccouncil.us or at (202) 724-8053, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Friday, November 10.** Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to cautrey@dccouncil.us.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee on Business and Economic Development at cautrey@dccouncil.us or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on November 27.**

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON EDUCATION
NOTICE OF PUBLIC ROUNDTABLE**
1350 Pennsylvania Avenue, NW, Washington, DC 20004

**COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC ROUNDTABLE**

on

PR22-0560 - Public Charter School Board Naomi Shelton Confirmation Resolution of 2017

On

**Friday, December 8, 2017
1:00 p.m., Hearing Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Councilmember David Grosso announces the scheduling of a public roundtable of the Committee on Education on PR22-0560, Public Charter School Board Naomi Shelton Confirmation Resolution of 2017. The roundtable will be held at 1:00 p.m. on Friday, December 8, 2017 in Hearing Room 123 of the John A. Wilson Building.

The stated purpose of PR22-0560 is to confirm the appointment of Naomi Shelton as a member of the Public Charter School Board in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01), and pursuant to section 2214 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.14).

Those who wish to testify may sign-up online at <http://bit.do/educationhearings> or call the Committee on Education at (202) 724-8061 by 5:00pm Wednesday, December 6. Persons wishing to testify are encouraged, but not required, to submit 10 copies of written testimony. Witnesses appearing on his or her own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ashley Strange, astrange@dccouncil.us, or by post to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004. The record will close at 5:00 p.m. on Monday, December 11, 2017.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC ROUNDTABLE**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

**CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC ROUNDTABLE**

on

**PR 22-563, District of Columbia Corrections Information Council Governing Board
Katharine Aiken Huffman Reappointment Resolution of 2017**

on

**Monday, November 20, 2017
11:30 a.m., Hearing Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Council Chairman Phil Mendelson announces the scheduling of a public roundtable of the Committee of Whole on PR 22-563, the “District of Columbia Corrections Information Council Governing Board Katharine Aiken Huffman Reappointment Resolution of 2017.” The roundtable will be held on Monday, November 20, 2017 at 11:30 a.m. in Hearing Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The stated purpose of PR 22-563 is to reappoint Ms. Huffman to the District of Columbia Corrections Information Council Governing Board (“Board”) to complete a 2-year term to end on May 4, 2018. The mission of the Board is to provide advice and information to the Director of the Bureau of Prisons and the Director of the Department of Corrections regarding matters affecting District of Columbia inmates. In addition, the Board is tasked with reviewing and making recommendations regarding the conditions of confinement of District of Columbia inmates in both the Bureau of Prisons and the Department of Corrections custody. The purpose of this roundtable is to receive testimony from public witnesses as to the fitness of this nominee for the Board.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or call Peter Johnson, Special Counsel at (202) 724-8083, and to provide your name, address, telephone number, organizational affiliation and title (if any) by noon Friday, November 17, 2017. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on November 16, 2017 the testimony will be distributed to Councilmembers before the roundtable. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. Copies of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council’s office or on <http://lims.dccouncil.us>.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Monday, December 4, 2017.

**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 ROUNDTABLE ON:

PR 22-582, the Resources for the Future Inc., Revenue Bonds Project Approval Resolution of 2017”

Monday, November 13, 2017

9:00 a.m.

**Room 123 - 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 Monday, November 13, 2017 at 9:00 a.m. in Room 123, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 22-582, the Resources for the Future Inc., Revenue Bonds Project Approval Resolution of 2017” would authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$25 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist Resources for the Future, Inc., 1616 P LandCo, LLC, and 1616 P OpCo, LLC in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act. The project is located at 1616 P Street, NW, in Ward 2.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 9:00 a.m. on Thursday, November 9, 2017. 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.

COUNCIL OF THE DISTRICT OF COLUMBIA
CONSIDERATION OF TEMPORARY LEGISLATION

B22-543, Public Employee Relations Board Term-Limit Temporary Amendment Act of 2017, **B22-545**, Medical Respite Services Exemption Temporary Amendment Act of 2017, **B22-563**, Government Employer-Assisted Housing Temporary Amendment Act of 2017, **B22-565**, Business Improvement District Tax Exemption Temporary Amendment Act of 2017, and **B22-567**, Southwest Waterfront Park Bus Prohibition Temporary Act of 2017 were adopted on first reading on November 7, 2017. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on December 5, 2017.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

Pursuant to DC Official Code Sec 47-361 et seq. of the Reprogramming Policy Act of 1990, the Council of the District of Columbia gives notice that the Mayor has transmitted the following reprogramming request(s).

A reprogramming will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a reprogramming will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 5 Washington, D.C. 20004. Copies of reprogrammings are available in Legislative Services, Room 10.
Telephone: 724-8050

Reprog. 22-92

Request to reprogram \$3,964,856 of Pay-As-You-Go (Paygo) Capital funds budget authority and allotment from the District of Columbia Public Schools (DCPS) to the Reverse Pay-As-You-Go (Paygo) Capital project and subsequently to the Local funds budget of DCPS was filed in the Office of the Secretary on November 2, 2017. This reprogramming will ensure that the budget is disbursed for its intended use from the appropriate agency fund.

RECEIVED: 14 day review begins November 3, 2017

Reprog. 22-93

Request to reprogram \$1,724,000 of Pay-As-You-Go (Paygo) Capital Funds budget authority allotment from the Department of Consumer and Regulatory Affairs (DCRA) to the Reverse Pay-As-You-Go (Paygo) Capital project and subsequently to the Local funds budget of DCRA was filed in the Office of the Secretary on November 2, 2017. This reprogramming is necessary to ensure that the budget is expended from the correct fund.

RECEIVED: 14 day review begins November 3, 2017

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 10, 2017
Protest Petition Deadline: December 26, 2017
Roll Call Hearing Date: January 8, 2018
Protest Hearing Date: March 7, 2018

License No.: ABRA-108015
Licensee: Provost, LLC
Trade Name: Provost
License Class: Retailer's Class "C" Restaurant
Address: 2129 Rhode Island Avenue, N.E.
Contact: Andrew Kline, Esq.: 202-686-7600

WARD 5 ANC 5C SMD 5C07

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 Roll Call Hearing date on January 8, 2018 at 10 a.m., 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 on March 7, 2018 at 4:30 p.m.

NATURE OF OPERATION

A new restaurant serving traditional American cuisine. Seating capacity of 87 inside. Total Occupancy Load of 100. Roof Top Summer Garden with 48 seats. The License will include an Entertainment Endorsement for the inside of the premises only.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION, AND HOURS OF LIVE ENTERTAINMENT INSIDE THE PREMISES

Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am 3 am

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE OUTDOOR ROOFTOP SUMMER GARDEN

Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 10, 2017
Protest Petition Deadline: December 26, 2017
Roll Call Hearing Date: January 8, 2018
Protest Hearing Date: March 7, 2018

License No.: ABRA-107853
Licensee: Regal Gallery Place, LLC
Trade Name: Regal Gallery Place Stadium 14
License Class: Retailer's Class "DX" Multipurpose Facility
Address: 701 7th Street, N.W.
Contact: Evadne Maxwell: (305) 789-2761

WARD 2

ANC 2C

SMD 2C01

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 Roll Call Hearing date on January 8, 2018 at 10 a.m., 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 on March 7, 2018 at 1:30 p.m.

NATURE OF OPERATION

New Class "DX" Multipurpose facility for a movie theatre serving pizza, chicken wings, pre-packaged candy, popcorn and alcoholic beverages. Total Occupancy Load of 3119.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION

Sunday through Saturday 11:00 am – 11:30 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 10, 2017
 Protest Petition Deadline: December 26, 2017
 Roll Call Hearing Date: January 8, 2018
 Protest Hearing Date: March 7, 2018

License No.: ABRA-107285
 Licensee: Nussbar, LLC
 Trade Name: Shouk
 License Class: Retailer’s Class “C” Restaurant
 Address: 395 Morse Street, N.E.
 Contact: Sean T. Morris, Esq.: 301-654-6570

WARD 5

ANC 5D

SMD 5D01

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 **Roll Call Hearing date on January 8, 2018 at 10 a.m., 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 on **March 7, 2018 at 1:30 p.m.**

NATURE OF OPERATION

A new casual, quick-service restaurant, serving 100% vegetarian Middle Eastern and Mediterranean food. Seating capacity of 32 inside. Total Occupancy Load of 32. Sidewalk Café with 16 seats. No entertainment, performances or dancing.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION ON PREMISE AND FOR SIDEWALK CAFE

Sunday through Saturday 11 am – 11 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 10, 2017
Protest Petition Deadline: December 26, 2017
Roll Call Hearing Date: January 8, 2018

License No.: ABRA-001324
Licensee: Capital Yacht Club
Trade Name: The Capital Yacht Club
License Class: Retailer's Class "CX" Multipurpose Facility
Address: 800 Wharf Street, S.W.
Contact: Guy Shields: (202) 488-8110

WARD 6

ANC 6D

SMD 6D04

Notice is hereby given that this licensee has requested Substantial Changes to their 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 on January 8, 2018 at 10 a.m., 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.

NATURE SUBSTANTIAL CHANGES

Request to increase Total Occupancy Load from 155 to 262 and for a Summer Garden with a seating capacity of 4.

CURRENT HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION/LIVE ENTERTAINMENT FOR INSIDE PREMISES

Sunday 10:00 am to 2:00 am, Monday through Saturday 8:00 am to 2:00 am

PROPOSED HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SUMMER GARDEN

Sunday through Saturday 10:30 am to 1:00 am

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD**NOTIFICATION OF CHARTER AMENDMENT**

The District of Columbia Public Charter School Board (DC PCSB) hereby gives notice of Carlos Rosario Public Charter School's (Carlos Rosario PCS) request to amend its charter goals and academic achievement expectations. Carlos Rosario PCS requests to amend its charter by revising one of its existing goals to clarify the progress target for students in the Spanish GED program, and to change the progress monitoring assessment it currently uses for that program to the Spark 3000 assessment, which per the school measures students' reading progress and is extremely reliable.

A public hearing will be held on December 18, 2017 at 6:30 p.m.; a vote will be held on January 22, 2017. The public is encouraged to comment on this proposal. Comments must be submitted on or before 4 p.m. on December 18, 2017.

How to Submit Public Comment:

1. Submit written comment one of the following ways:
 - a. E-mail: public.comment@dcpsb.org
 - b. Postal mail: Attn: Public Comment, *DC Public Charter School Board, 3333 14th ST. NW., Suite 210, Washington, DC 20010
 - c. Hand Delivery/Courier*: Same as postal address above
2. Sign up to testify in-person at the public hearing on December 18, 2017 to public.comment@dcpsb.org no later than 4 p.m. on December 14, 2017. Each person testifying is given two minutes to present testimony.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD**NOTIFICATION OF CHARTER AMENDMENT**

The District of Columbia Public Charter School Board (DC PCSB) hereby gives notice of St. Coletta Special Education Public Charter School, Inc.'s (St. Coletta PCS) request to amend its charter goals and academic achievement expectations. St. Coletta PCS requests to amend its charter by adding goals from the Alternative Accountability Framework, which the school believes will more accurately measure its student achievement and progress targets.

A public hearing will be held on December 18, 2017 at 6:30 p.m.; a vote will be held on January 22, 2017. The public is encouraged to comment on this proposal. Comments must be submitted on or before 4 p.m. on December 18, 2017.

How to Submit Public Comment:

1. Submit written comment one of the following ways:
 - a. E-mail: public.comment@dcpsb.org
 - b. Postal mail: Attn: Public Comment, *DC Public Charter School Board, 3333 14th ST. NW., Suite 210, Washington, DC 20010
 - c. Hand Delivery/Courier*: Same as postal address above

2. Sign up to testify in-person at the public hearing on December 18, 2017 to public.comment@dcpsb.org no later than 4 p.m. on December 14, 2017. Each person testifying is given two minutes to present testimony.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health (Department), pursuant to 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.), Mayor's Order 98-140, dated August 20, 1998, and the LGBTQ Cultural Competency Continuing Education Amendment Act of 2016, effective April 6, 2016 (D.C. Law 21-0095; 63 DCR 6502 (April 29, 2016)), hereby gives notice of her intent to amend Chapter 90 (Dental Assistants) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of this rulemaking is to require dental assistants to complete (2) hours of continuing education focusing on clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, (“LGBTQ”) or who question their sexual orientation or gender identify and expression, and (2) hours of continuing education focusing on infection control beginning with the renewal period ending December 31, 2019.

Chapter 90, DENTAL ASSISTANTS, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

A new Section 9007 is added to read as follows:

9007 CONTINUING EDUCATION REQUIREMENTS

- 9007.1 Except as provided in § 9007.2, this section shall apply to all applicants for the renewal, reactivation, or reinstatement of a dental assistant registration.
- 9007.2 This section shall not apply to applicants for the first renewal of a dental assistant registration.
- 9007.3 A continuing education credit shall be valid only if it is part of a program approved by the Board.
- 9007.4 An applicant shall have the burden of verifying whether a program is approved by the Board pursuant to this section prior to attending the program.
- 9007.5 A contact hour shall consist of at least sixty (60) minutes of instruction in an approved continuing education program and shall equal one-tenth (0.1) of a continuing education credit (“CEU”).
- 9007.6 Beginning with the renewal period ending December 31, 2019, an applicant for renewal of a dental assistant registration shall:

- (a) Have completed seven (7) hours of credit within the two-year (2) period preceding the date the registration expires, which shall include at least:
 - (1) Current certification of having completed two (2) hours in basic life support (“BLS certification”);
 - (2) Two (2) hours of infection control in approved continuing education programs;
 - (3) One (1) hour of ethics in an approved continuing education programs; and
 - (4) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression (“LGBTQ”) meeting the requirements of D.C. Official Code § 3-1205.10(b)(5);
- (b) Attest to completion of the required continuing education credits on the renewal application form; and
- (c) Be subject to a random audit.

9007.7

Beginning with the renewal period ending December 31, 2019, to qualify for reinstatement or reactivation of a dental assistant registration, an applicant shall submit proof of having completed a minimum of seven (7) hours of credit within the year immediately preceding the date of the application, which shall include at least:

- (a) Current certification of having completed two (2) hours in basic life support (“BLS certification”);
- (b) Two (2) hours of infection control in approved continuing education programs;
- (c) One (1) hour of ethics in an approved continuing education programs; and
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression (“LGBTQ”) meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5).

- 9007.8 Applicants for renewal of a registration shall only be required to prove completion of the required continuing education credits by submitting proof if requested to do so as part of the random audit, or if otherwise requested to do so by the Board.
- 9007.9 An applicant for renewal of a registration who fails to renew the registration by the date the registration expires may renew the registration for up to sixty (60) days after the date of expiration by completing the application, submitting the required supporting documents, and paying the required late fee. Upon renewal, the applicant shall be deemed to have possessed a valid registration during the period between the expiration of the registration and the renewal thereof.
- 9007.10 If an applicant for renewal of a registration fails to renew the registration and pay the late fee within sixty (60) days after the expiration of applicant's registration, the registration shall be considered to have lapsed on the date of expiration. The applicant shall thereafter be required to apply for reinstatement of an expired registration and meet all requirements and fees for reinstatement.
- 9007.11 The Board may, in its discretion, grant an extension of the sixty (60) day period, up to a maximum of one (1) year, to renew after expiration if the applicant's failure to renew was for good cause. As used in this section, "good cause" includes the following:
- (a) Serious and protracted illness of the applicant; and
 - (b) The death or serious and protracted illness of a member of the applicant's immediate family.
- 9007.12 An extension granted under this section shall not exempt the dental assistant from complying with the continuing education requirements for any other renewal period.

All persons desiring to comment on the subject of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*. Comments should be sent to the Department of Health, Phillip L. Husband, General Counsel, Office of the General Counsel, 899 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained during the hours of 9 a.m. to 5 p.m., Monday through Friday, excluding holidays, at the address listed above, or by contacting Angli Black, Administrative Assistant, at Angli.Black@dc.gov, (202) 442-5977.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health (Department), pursuant to 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) (2016 Repl.)), Mayor's Order 98-140, dated August 20, 1998, and the LGBTQ Cultural Competency Continuing Education Amendment Act of 2016, effective April 6, 2016 (D.C. Law 21-0095; 63 DCR 6502 (April 29, 2016)), hereby gives notice of her intent to amend Chapter 92 (Teaching Licenses for Dentistry and Dental Hygiene) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of this rulemaking is to establish continuing education requirements for individuals licensed to teach dentistry or dental hygiene in the District of Columbia which will include the mandate to complete (2) hours of continuing education as part of the continuing education requirements on cultural competency or training focusing on clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression ("LGBTQ") beginning with the renewal period ending December 31, 2019.

Chapter 92, TEACHING LICENSES FOR DENTISTRY AND DENTAL HYGIENE, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

New Sections 9211, 9212, and 9213 are added to read as follows:

9211 CONTINUING EDUCATION REQUIREMENTS

- 9211.1 This section shall apply to applicants for the renewal, reactivation, or reinstatement of a teacher's license in dentistry or of a teacher's license in dental hygiene beginning with the renewal period ending December 31, 2019, and for subsequent terms.
- 9211.2 A continuing education credit shall be valid only if it is part of a program or activity approved by the Board in accordance with § 9212.
- 9211.3 Beginning with the renewal period ending December 31, 2019, an applicant for renewal of a teacher's license in dentistry shall submit proof pursuant to § 9211.11 of having completed thirty (30) hours of credit within the two-year (2) period preceding the date the license expires, which shall include at least:
- (a) Current cardiopulmonary resuscitation certification for health care providers ("CPR certification");

- (b) Two (2) hours of infection control in approved continuing education programs;
- (c) Two (2) hours of ethics in an approved continuing education programs; and
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression (“LGBTQ”) meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5).

9211.4 Beginning with the licensure period ending December 31, 2019, an applicant for renewal of a teacher’s license in dental hygiene shall submit proof pursuant to § 9211.11 of having completed fifteen (15) hours of approved continuing education credit obtained within the two (2) year period preceding the date the license expires, which shall include:

- (a) Current CPR certification for healthcare providers at the basic level;
- (b) Two (2) hours of infection control training;
- (c) One (1) hour of ethics in an approved continuing education programs; and
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression (“LGBTQ”) meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5).

9211.5 Each applicant for renewal, reactivation, or reinstatement of a teacher’s license in dentistry who is permitted by the Drug Enforcement Agency and the District of Columbia Pharmaceutical Control Division to prescribe controlled substances in the District shall complete two (2) hours of continuing education in the abuse and misuse of controlled substances, and in opioid prescription practices. This continuing education shall be part of the continuing education hours required under Subsection 9211.3 of this chapter.

9211.6 Internet courses and programs shall not be used to satisfy the continuing education CPR certification requirement.

9211.7 Beginning with the licensure period ending December 31, 2019, to qualify for a teacher’s license in dentistry, a person in inactive status within the meaning of § 511 of the Act, D.C. Official Code § 3-1205.11 (2016 Repl.) who submits an

application to reactivate a license shall submit proof pursuant to § 9211.11 of having completed thirty (30) hours of approved continuing education credit obtained within the two (2) year period preceding the date of the application for reactivation of that applicant's license and an additional fifteen (15) hours of approved continuing education credit for each additional year that the applicant was inactive status beginning with the third year, which shall include at least:

- (a) Current cardiopulmonary resuscitation certification for health care providers ("CPR certification");
- (b) Two (2) hours of infection control in approved continuing education programs;
- (c) Two (2) hours of ethics in an approved continuing education programs; and
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression ("LGBTQ") meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5).

9211.8

Beginning with the licensure period ending December 31, 2019, to qualify for a teacher's license in dentistry, an applicant for reinstatement of a license shall submit proof pursuant to § 9211.11 of having completed thirty (30) hours of approved continuing education credit obtained within the two (2) year period preceding the date of the application for reinstatement of the applicant's license and an additional fifteen (15) hours of approved continuing education credit for each additional year that the license was expired beginning with the third year, which shall include at least:

- (a) Current cardiopulmonary resuscitation certification for health care providers ("CPR certification");
- (b) Two (2) hours of infection control in approved continuing education programs;
- (c) Two (2) hours of ethics in an approved continuing education programs; and
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression

(“LGBTQ”) meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5).

9211.9 Beginning with the licensure period ending December 31, 2019, to qualify for a teacher’s license in dental hygiene, a person in inactive status within the meaning of § 511 of the Act, D.C. Official Code § 3-1205.11 (2016 Repl.) who submits an application to reactivate a license shall submit proof pursuant to § 9211.11 of having completed fifteen (15) hours of approved continuing education credit obtained within the two (2) year period preceding the date of the application for reactivation of that applicant’s license and an additional eight (8) hours of approved continuing education credit for each additional year that the applicant was in inactive status beginning with the third year, which shall include:

- (a) Current CPR certification for healthcare providers at the basic level;
- (b) Two (2) hours of infection control training;
- (c) One (1) hour of ethics in an approved continuing education programs; and
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression (“LGBTQ”) meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5).

9211.10 Beginning with the licensure period ending December 31, 2019, to qualify for a license, an applicant for reinstatement of a teacher’s license in dental hygiene shall submit proof pursuant to § 9211.11 of having completed fifteen (15) hours of approved continuing education credit obtained within the two (2) year period preceding the date of the application for reinstatement of the applicant’s license and an additional eight (8) hours of approved continuing education credit for each additional year that the license was expired beginning with the third year, which shall include:

- (a) Current CPR certification for healthcare providers at the basic level;
- (b) Two (2) hours of infection control training;
- (c) One (1) hour of ethics in an approved continuing education programs; and
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression

(“LGBTQ”) meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5).

- 9211.11 An applicant for a teacher’s license in dentistry or for a teacher’s license in dental hygiene shall prove completion of required continuing education credits by submitting with the application the following information with respect to each program:
- (a) The name and address of the sponsor of the program;
 - (b) The name of the program, its location, a description of the subject matter covered, and the names of the instructors;
 - (c) The dates on which the applicant attended the program;
 - (d) The hours of credit claimed; and
 - (e) Verification by the sponsor of completion, by signature or stamp.
- 9211.12 An applicant for renewal of a teacher’s license in dentistry or of a teacher’s license in dental hygiene license who fails to submit proof of having completed continuing education requirements by the date the license expires may renew the license up to sixty (60) days after expiration by submitting this proof pursuant to § 9211.11 and by paying the required additional late fee.
- 9211.13 Upon submitting proof of having completed continuing education requirements and paying the late fee, the applicant shall be deemed to have possessed a valid license during the period between the expiration of the license and the submission of the required documentation and payment of the late fee.
- 9211.14 If an applicant for renewal of a teacher’s license in dentistry or of a teacher’s license in dental hygiene fails to submit proof of completion of continuing education requirements or pay the late fee within sixty (60) days after the expiration of applicant’s license, the license shall be considered to have lapsed on the date of expiration.
- 9211.15 The Board may, in its discretion, grant an extension of the sixty (60) day period to renew after expiration if the applicant’s failure to submit proof of completion was for good cause. As used in this section, “good cause” includes the following:
- (a) Serious and protracted illness of the applicant; and
 - (b) The death or serious and protracted illness of a member of the immediate family.

9212 APPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES

- 9212.1 The Board, in its discretion, may approve continuing education programs and activities that contribute to the growth of an applicant in professional competence in the practice of dentistry and which meet the other requirements of this section.
- 9212.2 The Board may approve the following types of continuing education programs, if the program meets the requirements of § 9212.3:
- (a) An undergraduate or graduate course given at an accredited college or university;
 - (b) A seminar or workshop;
 - (c) An educational program given at a conference or convention; and
 - (d) In-service training.
- 9212.3 To qualify for approval by the Board, a continuing education program shall do the following:
- (a) Be current in its subject matter;
 - (b) Be developed and taught by qualified individuals; and
 - (c) Meet one of the following requirements:
 - (1) Be administered or approved by a recognized national, state, or local dentistry organization; health care organization; accredited health care facility; or an accredited college or university; or
 - (2) Be submitted by the program sponsors to the Board for review no less than sixty (60) days prior to the date of the presentation and be approved by the Board.
- 9212.4 Continuing education credit will not be awarded for programs that do not relate to the theory or clinical application of theory pertaining to the practice of dentistry including but not limited to:
- (a) Courses pertaining to business communications and operations;
 - (b) Courses solely pertaining to medical/dental coding terminology;
 - (c) Courses pertaining to personal self-improvement, financial gain, or career options;
 - (d) Courses designed for lay persons;

- (e) Providing instruction to persons who are not licensed, registered, certified, or students in the field of dentistry, dental hygiene, or dental assisting, or for conducting research, or publications, or any preparation for same;
- (f) On-the-job training;
- (g) Orientation programs or staff meetings, including orientation to new policies, non-therapeutic procedures, equipment, forms, responsibilities, services, etc;
- (h) Presentations made by students;
- (i) Participation in or attendance at, not as a presenter, case conferences, grand rounds, or informal presentations; or
- (j) Work done in the course of an applicant's normal occupations or incident to the performance of his or her regular professional duties, such as teaching didactic courses, research, or course preparation in the case of a teacher or professor.

9212.5 The Board may issue and update a list of approved continuing education programs.

9212.6 An applicant shall have the burden of verifying whether the Board pursuant to this section prior to attending the program approves a program.

9212.7 The Board may approve the following continuing education activities by an applicant:

- (a) Serving as an instructor or speaker at a conference, seminar, workshop, or in-service training;
- (b) Publication of an article in a professional journal or publication of a book or a chapter in a book or publication of a book review in a professional journal or bulletin;
- (c) Serving as a clinical instructor for students of dentistry or dental residents; and
- (d) Participation in research as a principal investigator or research assistant.

9213 CONTINUING EDUCATION CREDITS

9213.1 The Board may grant continuing education credit for whole hours only, with a minimum of fifty (50) minutes constituting one (1) credit hour.

- 9213.2 For approved undergraduate or graduate courses, each semester hour of credit shall constitute fifteen (15) hours of continuing education credit, and each quarter hour of credit shall constitute ten (10) hours of continuing education credit.
- 9213.3 The Board may grant a maximum of thirteen (13) continuing education credits per year to an applicant who attends a full time post-graduate education program.
- 9213.4 The Board may grant credit to an applicant who serves as an instructor or speaker at an acceptable program for both preparation and presentation time, subject to the following restrictions:
- (a) The maximum amount of credit which may be granted for preparation time is twice the amount of the associated presentation time;
 - (b) The maximum amount of credit which may be granted pursuant to this subsection is fifty percent (50%) of an applicant's continuing education requirement; and
 - (c) The presentation shall have been completed during the period for which credit is claimed.
- 9213.5 The Board may grant an applicant who is an author or editor of a published book twenty-five (25) continuing education credits, if the book has been published or accepted for publication during the period for which credit is claimed, and the applicant submits proof of this fact in the application.
- 9213.6 The Board may grant an applicant who is an author of a published original paper five (5) continuing education credits, subject to the same restrictions set forth for books in § 9213.5.
- 9213.7 The Board may grant an applicant who is the sole author of a published book review, review paper, or abstract, two (2) continuing education credits, subject to the same restrictions set forth for books in § 9213.5.

All persons desiring to comment on the subject of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*. Comments should be sent to the Department of Health, Phillip L. Husband, General Counsel, Office of the General Counsel, 899 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained during the hours of 9 a.m. to 5 p.m., Monday through Friday, excluding holidays, at the address listed above, or by contacting Angli Black, Administrative Assistant, at Angli.Black@dc.gov, (202) 442-5977.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS**NOTICE OF PROPOSED RULEMAKING**

The Chancellor of the District of Columbia Public Schools (DCPS), pursuant to Section 103 of the District of Columbia Public Education Reform Amendment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-172(c) (2012 Repl.)), and Mayor's Order 2007-186, dated August 10, 2007, hereby gives notice of the intent to amend Section 1023 (Communicable Diseases Contracted by Employees) of Chapter 10 (General Personnel Policies) of Title 5 (Education), Subtitle E (Original Title 5) of the District of Columbia Municipal Regulations (DCMR),.

The purpose of the proposed rulemaking is to update existing Communicable Diseases Contracted by Employees regulations to align with Department of Health regulations - Communicable Diseases Contracted by Students, Final Rulemaking published at 61 DCR 12274 (November 28, 2014). The proposed rulemaking revises the requirements for maintaining employees at schools and other duty locations and returning them to work after having been diagnosed with a communicable disease.

The proposed rulemaking will be submitted to the Council for a forty-five (45) day period of review. The Chancellor of the District of Columbia Public Schools 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 in the *D.C. Register* and after approval by the Council of the District of Columbia, as specified in Section 103(c)(2) of the Act (D.C. Official Code § 38-172(c)(2)).

Chapter 10, GENERAL PERSONNEL POLICIES, of Title 5-E DCMR, ORIGINAL TITLE 5, is amended as follows:

Section 1023, COMMUNICABLE DISEASES CONTRACTED BY EMPLOYEES, is deleted and replaced in its entirety to read as follows:

1023 COMMUNICABLE DISEASES CONTRACTED BY EMPLOYEES

1023.1 An employee with one of the following communicable diseases shall be excluded from their duty location and permitted to return to work under the following conditions:

- (a) Varicella ("Chickenpox"): An employee diagnosed with chickenpox, even if previously vaccinated, may return to work after lesions have crusted and upon submission of a licensed practitioner's note giving medical clearance to return to work;
- (b) Conjunctivitis ("Pink Eye"):

- (1) An employee diagnosed with viral conjunctivitis may return to work after any redness and discharge have disappeared;
 - (2) An employee diagnosed with bacterial conjunctivitis may return to work twenty-four (24) hours after commencing antibiotic treatment if a licensed practitioner provides a note attesting to the diagnosis, the onset of treatment, and that the employee is cleared to return to work; or
 - (3) An employee diagnosed with allergic conjunctivitis may return to work upon submitting a licensed practitioner's note stating the diagnosis;
- (c) Acute Diarrhea:
- (1) An employee with infectious diarrhea (*e.g.*, Salmonella, Shigella, *E. coli*) may return to work when diarrhea ends or upon submitting a health care provider's note providing medical clearance to return to work; or
 - (2) An employee with non-infectious diarrhea (*e.g.*, inflammatory bowel disease, food allergy, reaction to medication) may return to work when diarrhea ends and with instruction to thoroughly wash hands with soap and water after using the toilet and before handling food;
- (d) An employee with a clinical syndrome such as meningitis or pneumonia resulting from Haemophilus influenzae type B (Hib) may return to work twenty-four (24) hours after completing [antibiotic] treatment and submitting a licensed practitioner's note attesting to the diagnosis and completion of treatment;
- (e) Hepatitis:
- (1) An employee with Hepatitis A may return to work one (1) week after onset of illness or jaundice and upon submitting a licensed practitioner's note providing medical clearance to return to work;
 - (2) An employee with Hepatitis B or C may return to work upon submitting a licensed practitioner's note providing medical clearance to return to work;
- (f) Impetigo (bacterial infection of the skin): An employee diagnosed with Impetigo may return to work twenty-four (24) hours after beginning antibiotic therapy, provided all lesions are covered, and upon submitting a

licensed practitioner's note stating that the employee is undergoing treatment;

- (g) Measles: An employee diagnosed with Measles may return to work four (4) days after the appearance of rash and upon submitting a licensed practitioner's note providing medical clearance to return to work;
- (h) Meningitis: An employee diagnosed with Meningitis may return to work upon submission of a licensed practitioner's note providing medical clearance to return to work;
- (i) Methicillin-resistant *Staphylococcus aureus* (MRSA): An employee diagnosed with MRSA may return to work provided that all wound drainage ("pus") is covered and contained;
- (j) Mumps: An employee diagnosed with Mumps may return to work five (5) days after the onset of swelling and upon submitting a licensed practitioner's note providing medical clearance to return to work;
- (k) Pediculosis (infestation of live head lice): An employee diagnosed with Pediculosis may remain at work that day; however the employee should commence treatment at the conclusion of the work day. The employee may return to work upon submitting a written statement attesting to the fact that the employee is undergoing treatment. An employee with only Nits (eggs) shall not be excluded from work but shall monitor themselves for re-infestation and seek treatment accordingly;
- (l) Pertussis ("Whooping Cough"): An employee diagnosed with Pertussis may return to work three (3) weeks after the onset of symptoms, if untreated, or five (5) days after starting antibiotic therapy and submitting a licensed practitioner's note attesting to the start of such therapy;
- (m) Pinworms: An employee diagnosed with Pinworms may return to work twenty-four (24) hours after the first treatment and upon submitting a licensed practitioner's note stating that the employee is under treatment;
- (n) Ringworm: An employee diagnosed with Ringworm may return to work upon submitting a licensed practitioner's note stating that the employee is under treatment;
- (o) Rubella (German Measles): An employee diagnosed with Rubella may return to work seven (7) days after the appearance of the rash;
- (p) Scabies ("Itch Mite"): An employee diagnosed with Scabies may return to work upon submission of a licensed practitioner's note indicating that the employee's treatment with a prescription lotion is complete;

- (q) Strep infection (scarlet fever, strep throat): An employee diagnosed with Strep infection may return to work twenty-four (24) hours after beginning antibiotic treatment, provided the employee is without fever for twenty-four (24) hours, and upon submission of a licensed practitioner's note affirming the start of treatment and the employee's fitness for duty; and
- (r) Tuberculosis:
 - (1) An employee diagnosed with active Tuberculosis may return to work upon providing written recommendation to return to work from the Tuberculosis Control Program of the Department of Health; and
 - (2) An employee diagnosed with latent Tuberculosis may return to work after initiating treatment and upon submission of a licensed practitioner's note giving medical clearance to return to work.

- 1023.2 A determination of whether, and/or under what circumstances, a food service employee, or an employee of a food service contractor, with amebiasis, campylobacteriosis, giardiasis, hepatitis A, salmonellosis, shigellosis, typhoid fever or other food-borne illnesses, shall be able to work shall be made on a case-by-case basis by the Director of the Department of Health.
- 1023.3 As necessary, the Department of Health shall be consulted regarding whether an employee infected with any other communicable disease shall be permitted to return to work in a capacity that involves contact with students or other employees.
- 1023.4 Any infected employee determined to be fit to return to work shall be treated in the same manner as any other employee, except that any restrictions or limitations in regard to the employee's performance of his or her duties, recommended by medical personnel, shall be implemented.
- 1023.5 Personnel policies and procedures regarding fitness-for-duty examinations, the granting of leave, and termination shall apply to any employee with a communicable disease.
- 1023.6 The Chancellor or an appropriate designee shall ensure that all employees School System personnel are provided with information concerning communicable diseases. This information shall include instruction in measures designed to prevent the spread of communicable diseases.
- 1023.7 Any information or record regarding an employee with a communicable disease is confidential and access to such information is to be limited to only personnel who are legally required to be informed of the employee's communicable disease.

Disclosure of any information to individuals outside of DCPS may not to be made without the express written consent of the employee; however, suspected or confirmed cases of the following communicable diseases shall be reported within two (2) hours to the Director of the Department of Health: measles, meningococcal meningitis, mumps, pertussis, rubella, tuberculosis, hepatitis A, and other food-borne illnesses (*e.g.*, food poisoning).

1023.8 For purposes of this section, “communicable disease” shall be defined in accordance with 22-B DCMR § 201.

Comments on this rulemaking should be submitted, in writing, to Eboni J. Govan, DCPS, at 1200 First Street, N.E., 12th Floor, Washington, D.C., 20002 or dcpsregs@dc.gov, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Questions may be directed to the address above or to (202)535.2647. Additional copies of this rule are available from the above address and DCPS’ website at www.dcps.dc.gov.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS**NOTICE OF PROPOSED RULEMAKING**

The Chancellor of the District of Columbia Public Schools (DCPS), pursuant to Section 103 of the District of Columbia Public Education Reform Amendment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-172(c) (2012 Repl.)), and Mayor's Order 2007-186, dated August 10, 2007, hereby gives notice of the intent to repeal Section 2414 (Communicable Diseases Contracted By Students) of Chapter 24 (Student Rights and Responsibilities) of Title 5 (Education), Subtitle E (Original Title 5), of the District of Columbia Municipal Regulations (DCMR), and replace it with a new Section 2414 (Communicable Diseases Contracted by Students) of Chapter 24 (Student Rights and Responsibilities) of Title 5 (Education), Subtitle B (District of Columbia Public Schools) of the DCMR.

The purpose of the proposed rulemaking is to update existing Communicable Diseases Contracted by Students regulations to align with Department of Health regulations - Communicable Diseases Contracted by Students, Final Rulemaking published at 61 DCR 12274 (November 28, 2014). The proposed rulemaking revises the requirements for maintaining students in school and returning them to school after having been diagnosed with a communicable disease.

The proposed rulemaking will be submitted to the Council for a forty-five (45) day period of review. The Chancellor of the District of Columbia Public Schools 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 in the *D.C. Register* and after approval by the Council of the District of Columbia, as specified in Section 103(c)(2) of the Act (D.C. Official Code § 38-172(c)(2)).

Chapter 24, STUDENT RIGHTS AND RESPONSIBILITIES, of Title 5-E DCMR, ORIGINAL TITLE 5, is amended as follows:

Section 2414, COMMUNICABLE DISEASES CONTRACTED BY STUDENTS, is repealed in its entirety.

Chapter 24, STUDENT RIGHTS AND RESPONSIBILITIES, of Title 5-B DCMR, DISTRICT OF COLUMBIA PUBLIC SCHOOLS, is amended as follows:

A new Section 2414 is established to read as follows:

2414 COMMUNICABLE DISEASES CONTRACTED BY STUDENTS

2414.1 The regulations found in Title 22, Subtitle B, Chapter 2, Section 209 of the of the District of Columbia Municipal Regulations shall be the rules and procedures followed by the District of Columbia Public Schools regarding all matters concerning communicable diseases contracted by students.

Comments on this rulemaking should be submitted, in writing, to Eboni J. Govan, DCPS, 1200 First Street, N.E., 10th Floor, Washington, D.C. 20002 or at dcpsregs@dc.gov no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Questions may be directed to the address above or to (202)535.2647. Additional copies of this rule are available from the above address and DCPS' website at www.dcps.dc.gov.

OFFICE OF TAX AND REVENUE

NOTICE OF PROPOSED RULEMAKING

The Deputy Chief Financial Officer of the District of Columbia Office of Tax and Revenue (OTR), of the Office of the Chief Financial Officer, pursuant to the authority set forth in D.C. Official Code § 47-874 (2015 Repl.), Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019, Pub. L. 109-356; D.C. Official Code § 1-204.24d (2016 Repl.)), and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of the intent to amend Chapter 3 (Real Property Taxes) of Title 9 (Taxation and Assessments) of the District of Columbia Municipal Regulations (DCMR), by adding a new Section 337 (Homestead Deduction and Senior Citizen/Disabled Tax Relief).

The proposed amendment to Section 337 provides guidance regarding the definition of owner for purposes of receiving the homestead deduction.

OTR gives notice of its intent to take final rulemaking action to adopt these regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 3, REAL PROPERTY TAXES, of Title 9 DCMR, TAXATION AND ASSESSMENTS, is amended as follows:

Section 337, [RESERVED], is amended by striking the title [RESERVED], and replacing the section in its entirety with the following:

337 HOMESTEAD DEDUCTION AND SENIOR CITIZEN/DISABLED TAX RELIEF

337.1 For purposes of D.C. Official Code §§ 47-849 through 47-850.03 and 47-863:

- (a) An owner of real property shall be a holder of title as set forth in the land records of the Recorder of Deeds, including the holder of an estate in fee simple or a freehold interest of indeterminate duration, including a life tenancy, but does not include a holder of a leasehold interest or future interest;
- (b) An individual who is not a title holder of record is not an owner of real property, except that the following individual shall be deemed to be an owner:
 - (1) A trust beneficiary who occupies real property owned of record by the trustee, as sole owner of an irrevocable special needs trust if the trust beneficiary has a disability as defined in Section 1614(a)(3) of the Social Security Act, approved October 30, 1972 (86 Stat. 1471; 42 USC § 1382c(a)(3)). For the purposes of this subparagraph, a trust is a special needs trust if the trust instrument:

- (A) States, among its purposes, that the trust assets are not intended to be counted in determining the beneficiary's eligibility for needs-based governmental benefits;
 - (B) Names the beneficiary with a disability as the sole trust beneficiary during his or her lifetime; and
 - (C) Provides that the beneficiary with a disability shall not serve as trustee;
- (2) The grantor, settlor or trustor of a revocable trust that holds bare legal title to real property, provided, that the grantor, settlor or trustor is a beneficiary of the trust, resides in the real property as his or her principal residence in the District, exhibits all incidents of ownership of the real property, and retains the power to revoke the trust; or
 - (3) A partner of a partnership that holds record title to real property where all partners reside in the real property as their principal residence in the District.
- 337.2 The term "revocable" shall mean that the grantor, settlor, transferor, creator or trustor of the trust has the right to recover property transferred to the trust and to end the trust at any time, thereby regaining absolute ownership of the trust property.
- 337.3 A trust is revocable if the grantor, settlor or trustor expressly reserves the power to revoke the trust under the terms of the trust instrument.
- 337.4 If a power to revoke is not expressly reserved, the revocability of the trust is determined under the law governing the trust. Trusts created under District law prior to March 10, 2004 are presumed irrevocable, while District trusts created on or after that date are presumed revocable.
- 337.5 For purposes of the homestead deduction and the senior citizen/disabled tax relief, if the grantor, settlor or trustor of a revocable trust resides in the real property as his or her principal residence in the District, then he or she is deemed to be a beneficiary of the revocable trust.

Comments on this proposed rulemaking should be submitted to Sonia Kamboh, Assistant General Counsel, Office of Tax and Revenue, no later than thirty (30) days after publication of this notice in the *D.C. Register*. Sonia Kamboh may be contacted by: mail at D.C. Office of Tax and Revenue, 1101 4th Street, S.W., Suite 750, Washington, D.C. 20024; telephone at (202) 442-6500; or, email at sonia.kamboh@dc.gov. Copies of this rule and related information may be obtained by contacting Sonia Kamboh as stated herein.

OFFICE OF TAX AND REVENUE**NOTICE OF PROPOSED RULEMAKING**

The Deputy Chief Financial Officer of the District of Columbia Office of Tax and Revenue (OTR), of the Office of the Chief Financial Officer, pursuant to the authority set forth in D.C. Official Code § 42-1117 (2012 Repl.), Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019, Pub. L. 109-356; D.C. Official Code § 1-204.24d (2016 Repl.)), and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of the intent to amend Chapter 5 (Tax on Recordation of Deeds) of Title 9 (Taxation and Assessments) of the District of Columbia Municipal Regulations (DCMR), by adding a new Section 528 (Revocable Trusts).

The proposed amendment to Section 528 provides guidance regarding the meaning of the terms revocable and irrevocable for purposes of the recordation tax exemption in connection with revocable trusts.

OTR gives notice of its intent to take final rulemaking action to adopt these regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 5, TAX ON RECORDATION OF DEEDS, of Title 9 DCMR, TAXATION AND ASSESSMENTS, is amended as follows:

A new Section 528 is added to read as follows:

528 REVOCABLE TRUSTS

- 528.1 The term “revocable” shall mean that the grantor, settlor, transferor, creator or trustor of the trust has the right to recover property transferred to the trust and to end the trust at any time, thereby regaining absolute ownership of the trust property.
- 528.2 A trust is revocable if the grantor, settlor or trustor expressly reserves the power to revoke the trust under the terms of the trust instrument.
- 528.3 If a power to revoke is not expressly reserved, the revocability of the trust is determined under the law governing the trust. Trusts created under District law prior to March 10, 2004 are presumed irrevocable, while District trusts created on or after that date are presumed revocable.
- 528.4 The grantor, settlor, transferor, creator or trustor of a revocable trust is deemed to be the present beneficiary of the trust.

Comments on this proposed rulemaking should be submitted to Sonia Kamboh, Assistant General Counsel, Office of Tax and Revenue, no later than thirty (30) days after publication of this notice in the *D.C. Register*. Sonia Kamboh may be contacted by: mail at D.C. Office of Tax and Revenue, 1101 4th Street, S.W., Suite 750, Washington, D.C. 20024; telephone at (202) 442-6500; or, email at sonia.kamboh@dc.gov. Copies of this rule and related information may be obtained by contacting Sonia Kamboh as stated herein.

OFFICE OF TAX AND REVENUE

NOTICE OF PROPOSED RULEMAKING

The Deputy Chief Financial Officer of the District of Columbia Office of Tax and Revenue (OTR), of the Office of the Chief Financial Officer, pursuant to the authority set forth in D.C. Official Code § 47-920 (2015 Repl.), Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019, Pub. L. 109-356; D.C. Official Code § 1-204.24d (2016 Repl.)), and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of the intent to amend Chapter 6 (Real Property Transfer Tax) of Title 9 (Taxation and Assessments) of the District of Columbia Municipal Regulations (DCMR), by adding a new Section 613 (Revocable Trusts).

The proposed amendment to Section 613 provides guidance regarding the meaning of the terms revocable and irrevocable for purposes of the transfer tax exemption in connection with revocable trusts.

OTR gives notice of its intent to take final rulemaking action to adopt these regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 6, REAL PROPERTY TRANSFER TAX, of Title 9 DCMR, TAXATION AND ASSESSMENTS, is amended as follows:

A new Section 613 is established to read as follows:

613 REVOCABLE TRUSTS

- 613.1 The term “revocable” shall mean that the grantor, settlor, transferor, creator or trustor of the trust has the right to recover property transferred to the trust and to end the trust at any time, thereby regaining absolute ownership of the trust property.
- 613.2 A trust is revocable if the grantor, settlor or trustor expressly reserves the power to revoke the trust under the terms of the trust instrument.
- 613.3 If a power to revoke is not expressly reserved, the revocability of the trust is determined under the law governing the trust. Trusts created under District law prior to March 10, 2004 are presumed irrevocable, while District trusts created on or after that date are presumed revocable.
- 613.4 The grantor, settlor, transferor, creator or trustor of a revocable trust is deemed to be the present beneficiary of the trust.

Comments on this proposed rulemaking should be submitted to Sonia Kamboh, Assistant General Counsel, Office of Tax and Revenue, no later than thirty (30) days after publication of this notice in the *D.C. Register*. Sonia Kamboh may be contacted by: mail at D.C. Office of Tax and Revenue, 1101 4th Street, S.W., Suite 750, Washington, D.C. 20024; telephone at (202) 442-6500; or, email at sonia.kamboh@dc.gov. Copies of this rule and related information may be obtained by contacting Sonia Kamboh as stated herein.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-282
November 3, 2017

SUBJECT: Appointments — Task Force on School Mental Health

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and pursuant to section 203 of the Early Childhood and School-Based Behavioral Health Infrastructure Act of 2012, effective June 7, 2012, D.C. Law 19-141; D.C. Official Code § 2-1517.32 (2016 Repl.), it is hereby **ORDERED** that:


1. The following persons are appointed as public members of the Task Force on School Mental Health (“**Task Force**”), for terms to end once the Task Force report, due February 9, 2018, is complete:
 - a. **MICHAEL LAMB**, as a non-core service agency school mental health provider.
 - b. **JUANITA PRICE**, as a representative of a core service agency.
2. The following persons are appointed as District of Columbia agency representatives of the Task Force for terms to end once the Task Force report, due February 9, 2018, is complete:
 - a. **DIETRA BRYANT-MALLORY**, as the District of Columbia Public Schools representative.
 - b. **TAIWAN LOVELACE**, as the Department of Behavioral Health school mental health program clinician appointed by the Mayor.
 - c. **LAQUANDRA NESBITT**, as the Deputy Mayor for Health and Human Services designee.
 - d. **TANYA ROYSTER**, as the Director of the Department of Behavioral Health.
 - e. **AURORA STEINLE**, as the Deputy Mayor for Education designee.

f. **HEIDI SCHUMACHER**, as the State Superintendent of Education designee.

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



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-283
November 3, 2017

SUBJECT: Appointment — Commission for Women


ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with section 3 of the District of Columbia Commission for Women Act of 1978, effective September 22, 1978, D.C. Law 2-109; D.C. Official Code § 3-702 (2016 Repl.), it is hereby **ORDERED** that:

1. **SUSAN SARFATI** is appointed as a public member of the Commission for Women, replacing Endrea Frazier, to serve the remainder of an unexpired term ending April 20, 2018, and for a new term to end April 20, 2021.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-284
November 3, 2017

SUBJECT: Reappointments and Appointments - United Planning Organization Board of Directors


ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with the Economic Opportunity Act of 1964, approved August 20, 1964, Pub. L. 88-452; 78 Stat. 516, and the bylaws of the United Planning Organization, as amended on July 17, 2014, it is hereby **ORDERED** that:

1. The following persons are reappointed as mayoral representative members to the United Planning Organization Board of Directors (**UPO**) to serve a term ending October 23, 2020:
 - a. **GABRIELA MOSSI**
 - b. **DIDIER SINISTERRA**
2. **SHANTELE WRIGHT** is appointed as a mayoral representative member to the UPO, replacing Courtney Weiner, to serve an unexpired term ending October 13, 2019.
3. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-285
November 3, 2017

SUBJECT: Reappointment and Appointments — Healthy Youth and Schools
Commission

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and pursuant to sections 701 and 702(a) and (b) of the Healthy Schools Act of 2010, effective July 27, 2010, D.C. Law 18-209; D.C. Official Code §§ 38-827.01, 38-827.02 (2012 Repl. and 2017 Supp.), it is hereby **ORDERED** that:

- 1) **JEFF TRAVERS** is reappointed as an expert in health, wellness, or nutrition member of the Healthy Youth and Schools Commission ("**Commission**"), for a term to end May 1, 2019.
- 2) The following persons are appointed as experts in health, wellness, or nutrition members of the Commission, for terms to end May 1, 2018:
 - a) **DANIELLE DOOLEY**, replacing Shannon Foster.
 - b) **TARYN MORRISSEY**, replacing Kellye McKenzie.
- 3) **LAUREN POLITE** is appointed as a student member of the Commission, replacing Honor Williams, for a term to end one (1) year from the effective date of this order.
- 4) The following persons are appointed as District of Columbia agency representative members of the Commission, serving at the pleasure of the Mayor:
 - a) **DIANA BRUCE**, as a representative of the District of Columbia Public Schools
 - b) **ROBIN DIGGS**, as a representative of the Department of Health
 - c) **HEIDI SCHUMACHER**, replacing Nancy Katz, as a representative of the Office of the State Superintendent of Education


- d) **CHARNETA SCOTT**, as a representative of the Department of Behavioral Health.

- 5) **AUDREY WILLIAMS** is appointed as the representative of the Public Charter School Board member of the Commission, serving at the pleasure of the Chair of the Public Charter School Board.

- 6.) **EFFECTIVE DATE**: This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

ACHIEVEMENT PREP PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Organizational Assessment Support Services**

Seeking a consulting firm to conduct an organizational assessment and make recommendations to ensure Achievement Prep Public Charter School is designed to effectively and efficiently meet the mission. Achievement Prep serves approximately one thousand scholars in PK3 through 8th grade in South East DC. To request the full RFP, please reach out to Nikki Diamantes at ndiamantes@achievementprep.org. Responses are due by 5pm on 11/27/17.

OFFICE OF ADMINISTRATIVE HEARINGS**DISTRICT OF COLUMBIA COMMISSION ON SELECTION AND TENURE OF
ADMINISTRATIVE LAW JUDGES****NOTICE OF PUBLIC MEETING**

In accordance with D.C. Code § 2-576(1), the District of Columbia Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings (Commission) hereby gives notice that it will meet on November 15, 2017, at 11 a.m. at the D.C. Rental Housing Commission, 441 4th Street, NW Suite 1140B North, Washington, DC in order to consider the reappointments of four Administrative Law Judges. The members will vote to close a portion of the meeting pursuant to D.C. Code § 2-575(b)(10), which permits closed meetings in order to “discuss the appointment, employment, assignment, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials.” The agenda below will be posted on the OAH website at www.oah.dc.gov and the Office of Open Government/BEGA website at www.open-dc.gov.

For further information, please contact Louis Neal at Louis.Neal@dc.gov or 202-724-3672.

AGENDA

- I. Call to Order (Board Chair)**
- II. Ascertainment of Quorum**
- III. Adoption of Agenda**
- IV. Executive Session (non-public). Vote to enter closed session to discuss personnel matters pursuant to D.C. Official Code § 2-575(b)(10).**
 - a) Discussion of and/or Vote on Reappointments of Administrative Law Judges**
 - i. Scott Harvey**
 - ii. Arabella Teal**
 - iii. Audrey Jenkins**
 - iv. Wanda Tucker**
- V. Resumption of Public Meeting**
- VI. Adjournment (Board Chair)**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, NOVEMBER 15, 2017
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
James Short, Jake Perry, Donald Isaac, Sr.

- Protest Hearing (Status)** **9:30 AM**
Case # 17-PRO-00057; California St. Hospitality, Inc., t/a Alfresco Tap and Grill, 2009 18th Street NW, License #107410, Retailer CR, ANC 1C
Application for a New License
- Show Cause Hearing (Status)** **9:30 AM**
Case # 17-CMP-00437; Mad Fox Brewing Company Taproom, LLC, t/a Mad Fox Brewing Company Taproom, 2218 Wisconsin Ave NW, License #92955
Retailer CR, ANC 3B
No ABC Manager on Duty
- Show Cause Hearing (Status)** **9:30 AM**
Case # 17-CMP-00451; Mad Fox Brewing Company Taproom, LLC, t/a Mad Fox Brewing Company Taproom, 2218 Wisconsin Ave NW, License #92955
Retailer CR, ANC 3B
No ABC Manager on Duty
- Show Cause Hearing (Status)** **9:30 AM**
Case # 17-251-00029, # 17-251-00029(a) and 17-251-00029(b), Gebtri, Inc., t/a Cedar Hill Bar & Grill/Uniontown Bar & Grill, 2200 Martin Luther King, Jr Ave SE, License #91887, Retailer CT, ANC 8A
Failed to Comply with Board Order and Failed to Follow Security Plan, Attempted Bribery, Interfered with an Investigation (Attempted Bribery), Failure to Operate the Establishment as the true and actual owner
- Show Cause Hearing (Status)** **9:30 AM**
Case # 17-CMP-00188; Precious Pies and Catering, LLC, t/a Layla Lounge 501 Morse Street NE, License #97367, Retailer CT, ANC 5D
Allowed Establishment to be Used for Unlawful or Disorderly Purposes,

Board’s Calendar
November 15, 2017

Failed to Follow Security Plan, Allowed Patrons to Remove a Bottle from a Table, Bar or Other Seating Area Where Served

Show Cause Hearing (Status) 9:30 AM
Case # 17-AUD-00041; 1606 K Street, LLC, t/a Fuel Pizza & Wings, 1606 K Street NW, License #88452, Retailer CR, ANC 2B
Failed to File Quarterly Statement

Show Cause Hearing (Status) 9:30 AM
Case # 17-AUD-00040; 600 F.D.C., LLC, t/a Fuel Pizza & Wings, 600 F Street NW, License #88727, Retailer CR, ANC 2C
Failed to File Quarterly Statement

Show Cause Hearing* 10:00 AM
Case # 17-CC-00082; Dean & Deluca of Georgetown, Inc., t/a Dean & Deluca 3276 M Street NW, License #18083, Retailer B, ANC 2E
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age

Fact Finding Hearing* 11:00 AM
Dennis S. Hodge, t/a Family Liquors, 710 H Street NE, License #21877, Retailer A, ANC 6A
Request to Extend Safekeeping

BOARD RECESS AT 12:00 PM
ADMINISTRATIVE AGENDA
1:00 PM

Protest Hearing* 1:30 PM
Case # 17-PRO-00045; N&D Entertainment, LLC, t/a Phoenix Restaurant Lounge, 2434 18th Street NW, License #107011, Retailer CR, ANC 1C
Application to Renew the License

Protest Hearing* 4:30 PM
Case # 17-PRO-00049; Church DC, LLC, t/a Church, 3222 M Street NW License #106963, Retailer CR, ANC 2E
Application for a New License

***The Board will hold a closed meeting for purposes of deliberating these hearings pursuant to D.C. Official Code §2-574(b)(13).**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CANCELLATION AGENDA

WEDNESDAY, NOVEMBER 15, 2017
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board will be cancelling the following licenses for the reasons outlined below:

ABRA-092684 – **Romeo & Juliet** – Retail – C – Restaurant – 301 Massachusetts Avenue NE
[Failure to Renew Basic Business License.]

ABRA-060470 – **Chopsticks/Hashi Sushi** – Retail – C – Restaurant – 1073 Wisconsin Avenue NW
[Licensee is out of business.]

ABRA-098864 – **The DC Pavilion** – Retail – C – Tavern – 1399 5th Street NE
[Licensee did not pay 2nd year payment.]

ABRA-097367 – **Layla Lounge** – Retail – C – Tavern – 501 Morse Street NE
[Licensee did not pay 2nd year payment.]

ABRA-102576 – **Vieux Carre/For Rent** – Retail – C – Tavern – 1413 K Street NW
[Licensee did not pay 2nd year payment.]

ABRA-022889 – **Serengeti** – Retail – C – Restaurant – 6210 Georgia Avenue NW
[Safekeeping][Licensee did not pay Safekeeping fee.]

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING
INVESTIGATIVE AGENDA**

**WEDNESDAY, NOVEMBER 15, 2017
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

On Wednesday, November 8, 2017 at 4:00 pm., the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed “to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations.”

1. Case# 17-AUD-00061, Spice a Caribbean Jerk Joint, 826 Shepherd Street N.W., Retailer DR, License # ABRA-095380

2. Case# 17-AUD-00062, Peacock Café, 3251 Prospect Street N.W., Retailer CR, License # ABRA-025832

3. Case# 17-AUD-00063, Siroc, 915 15th Street N.W., Retailer CR, License # ABRA-080975

4. Case# 17-AUD-00064, Laliguras Indian & Nepali Bistro, 4421 Connecticut Avenue N.W., Retailer CR, License # ABRA-095042

5. Case# 17-CC-00075, Johnny Pistolas, 2333 18th Street N.W., Retailer CR, License # ABRA-060401

6. Case# 17-CMP-00666, Library Tavern, 5420 3rd Street N.W., Retailer CT, License # ABRA-105058

7. Case# 17-CC-00113, Chinese Disco, 3251 Prospect Street N.W., License # ABRA-078058

8. Case# 17-CC-00097, Lacovelli Café & Liquor, 3651 Georgia Avenue N.W., Retailer A,
License # ABRA-105273

9. Case# 17-AUD-00071, Duplex Diner, 2004 18th Street N.W., Retailer CR, License # ABRA-
097032

10. Case# 17-251-00184, Leopold's Kafe Konditorei/L2, 3315 Caddy's Alley N.W., Retailer
CR, License # ABRA-025268

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING
LICENSING AGENDA**

**WEDNESDAY, NOVEMBER 15, 2017 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

1. Review Application for Safekeeping of License – Original Request. ANC 7F. SMD 7F06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *M&M Market*, 3544 East Capitol Street NE, Retailer B Grocery, License No. 078461.

2. Review Request for Change of Hours. *Approved Hours of Operation Inside Premises:* Sunday-Saturday 12am to 12am (24 hour operations). *Approved Hours of Alcoholic Beverage Sales and Consumption Inside Premises:* Saturday 10:30am to 2am, Monday-Thursday 11:30am to 2am, Friday 11:30am to 2:30am, Saturday 10:30am to 2:30am. *Approved Hours of Operation and Alcoholic Beverage Sales and Consumption for Summer Garden:* Saturday and Sunday 10:30am to 1am, Monday-Friday 11:30am to 1am. *Approved Hours of Live Entertainment:* Sunday-Saturday 6pm to 1am. *Proposed Hours of Alcoholic Beverage Sales and Consumption Inside Premises:* Saturday 10am to 2am, Monday-Thursday 11:30am to 2am, Friday 11:30am to 2:30am, Saturday 10am to 2:30am. *Proposed Hours of Alcoholic Beverage Sales and Consumption for Summer Garden:* Saturday and Sunday 10am to 1am, Monday-Friday 11:30am to 1am. ANC 2B. SMD 2B05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Hotel Tabard Inn*, 1739 N Street NW, Retailer CH, License No. 001445.

3. Review Request for Change of Hours. *Approved Hours of Operation:* Sunday 9am to 8pm, Monday-Saturday 9am to 9pm. *Approved Hours of Alcoholic Beverage Sales:* Sunday 10am to 8pm, Monday-Saturday 10am to 9pm. *Proposed Hours of Alcoholic Beverage Sales:* Sunday 9am to 8pm, Monday-Saturday 9am to 9pm. ANC 5D. SMD 5D01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *MOM's Organic Market*, 1501 New York Avenue NE, Retailer B Grocery, License No. 094996.

4. Review Request for Change of Hours. *Approved Hours of Operation and Alcoholic Beverage Sales:* Monday-Saturday 9am to 12am (Closed Sunday). *Proposed Hours of Operation and Alcoholic Beverage Sales:* Sunday-Saturday 9am to 12am. ANC 2B. SMD 2B06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No

conflict with Settlement Agreement. *Bell Wine and Liquor*, 1821 M Street NW, Retailer A Liquor Store, License No. 095984.

5. Review Request for Change of Hours. *Approved Hours of Operation and Alcoholic Beverage Sales and Consumption for Inside Premises*: Sunday-Saturday 10am to 2am. *Approved Hours of Operation and Alcoholic Beverage Sales and Consumption for Summer Garden*: Sunday-Saturday 10am to 12am. *Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Inside Premises and Summer Garden*: Sunday-Saturday 9am to 2am. ANC 4C. SMD 4C10. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Hitching Post Restaurant*, 200 Upshur Street NW, Retailer CT, License No. 090258.
-

6. Review Application for third floor Summer Garden with seating for 20 patrons. *Proposed Hours of Operation for Summer Garden*: Saturday-Sunday 12am to 12am (24 hour operations), Monday-Friday 7am-2am. *Proposed Hours of Alcoholic Beverage Sales and Consumption for Summer Garden*: Sunday-Thursday 11am-2am, Friday-Saturday 11am to 3am. ANC 7F. SMD 7F01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *DC Eagle*, 3701 Benning Road NE, Retailer CT, License No. 093984.
-

7. Request to Rescind Approval of 405.1 Establishment due to failure to renew license and pay annual fees. ANC 5E. SMD 5E06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Lot 1644*, 1644 North Capitol Street NW, Retailer CT, License No. 095528.
-

8. Review Application for Manager's License. *Valeria M. Linares*-ABRA 108268.
-

9. Review Application for Manager's License. *Lauren E. Skiba*-ABRA 108271.
-

***In accordance with D.C. Official Code §2-547(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

APPLETREE EARLY LEARNING PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Codification of New School Site Manual**

AppleTree Early Learning PCS is seeking a consultant to research and develop a new school site manual in order to document all start up processes and timelines, including but not limited to; hiring, facilities, supplies, student recruitment, and other related topics. Please contact Anne Zummo Malone, Chief of Schools, for details on the RFP. The deadline for responding to the RFP is November 22, 2017 at 5pm. Contact Anne Zummo Malone, Chief of Schools, 415 Michigan Avenue NE, Washington, DC 20017, or e-mail her at amalone@appletreeinstitute.org

DISTRICT OF COLUMBIA COMMISSION ON THE ARTS AND HUMANITIES

NOTICE OF PUBLIC MEETING

Board of Commissioners

The Board of Commissioners of the District of Columbia Commission on the Arts and Humanities (CAH) will be holding a Full Commission Meeting on Thursday, November 16, 2017 at 3:30 p.m. The meeting will be held at RM 5009, 200 I St. SE, Washington D.C. 20003.

A final agenda will be posted to the CAH website at <http://dcarts.dc.gov/page/commissioner-meetings>. For further information, please contact the front desk at (202) 724-5613.

TENTATIVE AGENDA

- | | |
|-----------------------------------|---------------------------|
| 1. Call to Order | Chairperson |
| 2. Adoption of the Agenda | All Commissioners Present |
| 3. Adoption of Minutes | All Commissioners Present |
| 4. Chairperson's Report | Chairperson |
| 5. Committee Reports | All Commissioners Present |
| 6. Executive Director's Report | Executive Director |
| 7. New Business and Announcements | All Commissioners Present |
| 8. Adjournment | Chairperson |

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**NOTICE OF FUNDING AVAILABILITY****Fiscal Year 2018 Healthy Tots Wellness Grant**

Request for Application Release Date: **Monday, December 4, 2017 at 12:00pm**

Pre-Application Question Period Ends: **Monday, December 18, 2017 at 3:00pm**

The Office of the State Superintendent of Education (OSSE) is soliciting applications to implement the Healthy Tots Wellness Grant. The Healthy Tots Wellness Grant Program is funded through the Healthy Tots Act Fund established by Section 4073 of the Healthy Tots Act of 2014, (D.C. Law 20-155; D.C. Official Code §§38-281, et. seq.), which is administered by OSSE's Division of Health and Wellness.

The purpose of the Healthy Tots Wellness Grant is to support the dissemination of healthy eating, physical activity, and wellness programming in the D.C. early child care community. OSSE is awarding funding to entities that can provide technical assistance and help implement wellness programming at targeted community based child care facilities in the District of Columbia. The selected applicants will be required to build capacity and sustainable partnerships within the early learning community. Applicants will be awarded funding to implement programming in these six areas:

- Gardening/Environmental Sustainability
- Farm to Childcare/Local Food Procurement
- Nutrition Education
- Physical Activity & Education
- Staff Wellness & Center Wellness Policy
- Family Style Dining

Eligibility: OSSE will accept applications from community-based organizations that can demonstrate expertise and success working with young children in one or more of these following areas:

- Gardening/Environmental Sustainability
- Farm to Childcare/Local Food Procurement
- Nutrition Education
- Physical Activity & Education
- Staff Wellness & Center Wellness Policy
- Family Style Dining

OSSE will accept one application per organization, however a lead organization may partner with other organization(s) that can provides services in another program area to expand reach. Partner organizations can only appear on one application. Applicants must designate ONE fiscal sponsor to oversee administration and reporting of funds. Applicants may not designate more than one fiscal sponsor. Applicants must use the Healthy Tots Act Wellness [Guidelines](#) as a key

resource and guide for trainings. The grantee must identify and provide an overview of other resources that will be used.

OSSE will prioritize awarding grants to organizations that provide services to child care facilities that operate in wards 1, 4, 5, 6, 7, or 8 and participate in CACFP. Targeted facilities need to be currently licensed by OSSE and accept child care subsidy as payment for at least 25% of existing infant and or toddler slots.

Length of Award: This grant period covers two fiscal years and is from March 1, 2018, to September 30, 2019, contingent upon funding availability and the grantee's satisfactory implementation of the proposed program. Year one spans from March 1, 2018 through September 30, 2018. Year two spans October 1st, 2018 through September 30, 2019. Applicants must re-apply for the second year funding.

Available Funding for Award: The total amount available for this award is \$500,000 per fiscal year. Each awarded organization can apply for up to \$100,000 for each fiscal year in the grant period. Applicants must use allocated funding outlined in their budget timeline each fiscal year as funding cannot be rolled over to the next year in the grant period, or funding will lapse.

Anticipated Number of Awards: OSSE anticipates awarding funds to no more than six applicants.

Pre-Application Question Period

To ensure an equal opportunity for all applicants, OSSE requests that applicants submit questions regarding the RFA electronically to Patrilie Hernandez, Patrilie.Hernandez@dc.gov by **3 p.m. on Dec. 18, 2017**. Answers to submitted questions will be made available by **Jan. 2, 2018**.

Questions submitted after this deadline date will not receive responses. Responses to questions will be published on the FAQ page [here](#).

Applicants are strongly encouraged to participate in the Pre-Application Information Session on **Monday, Dec. 11, 2017 from 10 a.m.-1 p.m.** A recording of the information session will be available on the OSSE [website](#).

Healthy Tots Grant Pre-Application Information Session

Date: December 11, 2017

Time: 10:00am -1:00pm

Location: Office of the State Superintendent of Education, 810 First St NE, Room 806B

Register Here: <https://www.eventbrite.com/e/healthy-tots-wellness-grant-pre-application-information-session-tickets-39042451022>

For additional information regarding this grant program, please contact:

Patrilie Hernandez, MS

Management Analyst

Healthy Tots Act

Division of Health and Wellness

Office of the State Superintendent of Education

810 First St. NE, Ninth Floor

Washington, DC 20002

C: (202) 394-2451

E: patrilie.hernandez@dc.gov

The Request for Applications will be released **December 4, 2017 at 12:00 P.M.** through OSSE's Enterprise Grants Management System. The online system and training videos may be accessed by visiting <http://grants.osse.dc.gov>.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**REVISED NOTICE OF FUNDING AVAILABILITY****Fiscal Year 2018 McKinney-Vento Homeless Education Grant (ESSA Title VII, Part B)****Request for Application Release Date: Monday, November 13, 2017**

The Division of K-12 Systems and Supports within the Office of the State Superintendent of Education (OSSE) will issue a Request for Applications for the FY 2018 McKinney-Vento Homeless Education Grant Program (MKV) for eligible Local Educational Agencies (LEAs) in the District of Columbia.

A total of at least One Hundred and Thirteen Thousand, Eight Hundred and Forty-Seven Dollars and Zero Cents (\$113,847.00) in grant funds shall be used by District of Columbia LEAs to address the educational and related needs of homeless children and youth. LEAs, with or without this funding, must ensure that homeless children and youth have equal access to the same free, appropriate public education, including public preschool education, as provided to other children and youths. Authorized under Title VII-B of the McKinney-Vento Homeless Assistance Act, Section 726, as amended, the law's specific purposes are to facilitate the enrollment, attendance, and success in school of homeless children and youth.

LEAs serving homeless students in pre-kindergarten through the twelfth grade within the District of Columbia are eligible to apply. When distributing funding, OSSE will prioritize LEAs with a high level of need, as represented by enrollment data.

Priority points will be awarded to LEAs with demonstrated need as documented by any of the following characteristics:

- High percentage of identified homeless children and youth as compared to LEA's overall student population.
- Significant increase of identified homeless students in the previous school year, with projections of a continued increase.
- High number of identified homeless children and youth as compared to LEA's overall student population.

The grant award period will be from the date of the award to September 30, 2018, and LEAs must commit to obligate all grant funds awarded under this competition by September 30, 2018. Program costs must be paid, not merely incurred, by the awardee to the payee prior to requesting reimbursement. Awards may be extended for two additional years if the sub-recipient's program remains in compliance with all grant requirements. All awards will be reviewed annually for consideration of continued funding. To receive more information or for a copy of the Request for Applications (RFA), please contact:

Danielle C. Rollins, Program Analyst
Homeless Education Program
Office of the State Superintendent of Education

810 First St. NE, 8th Floor
Washington, D.C. 20002
Telephone: (202) 741-0255
Email: Danielle.Rollins@dc.gov

LEAs interested in applying for MKV funds may use the following link to access OSSE's on-line Enterprise Grants Management System (EGMS): <http://grants.osse.dc.gov/>. The RFA and application submission guidance will also be available on OSSE's Transitory Services webpage at <https://osse.dc.gov/service/education-homeless-children-and-youth-program>.

A review panel will be convened to review, score, and rank each application. The review panel will be composed of neutral, qualified, professional individuals selected for their expertise, knowledge or related experiences. Upon completion of its review, the panel(s) shall make recommendations for awards based on the scoring rubric(s). OSSE's Division of Elementary, Secondary, and Specialized Education will make all final award decisions.

OSSE will provide two pre-application technical assistance sessions. The pre-application technical assistance sessions will include an overview of the MKV grant program, competition, and EGMS for application submissions; and will provide technical assistance for any grant competition inquiries.

A web-based pre-application technical assistance session will be held on **Friday, November 17, 2017**. An in-person pre-application technical assistance session will be held at OSSE (810 First St. NE, Washington, DC) on **Monday, December 4, 2017** in the 8th Floor Conference Room (806 A/B). Please note that seating will be limited so please limit the number of staff registering and attending the in-person session to two or less. Potential applicants may register for the November 17 session [here](#) or for the December 4 session [here](#).

All LEAs planning to apply for this grant are strongly encouraged to attend a pre-application technical assistance session and should submit Intent to Apply via email to Danielle C. Rollins at Danielle.Rollins@dc.gov by **Friday, December 8, 2017**.

FRIENDSHIP PUBLIC CHARTER SCHOOL
REQUEST FOR PROPOSALS

Friendship Public Charter School is seeking bids from prospective vendors to provide;

- Budget Software and Implementation Services
- Mental Health, Speech and Language Services for General Education Students, Restorative Practice Training and Consulting Services to assist with Special Education and Pre-Referral Program Enhancements
- Dell Computer Hardware, Laptops, Desktops, Servers and Certified Dell Computer Repair Facility

The competitive Request for Proposal can be found on FPCS website at <http://www.friendshipschools.org/procurement>. Proposals are due no later than 4:00 P.M., EST, Thursday, December 7, 2017. No proposals will be accepted after the deadline. Questions can be addressed to ProcurementInquiry@friendshipschools.org.

**DEPARTMENT OF HEALTH (DOH)
COMMUNITY HEALTH ADMINISTRATION (CHA)**

**NOTICE OF FUNDING AVAILABILITY (NOFA)
DC3C_11.24.17 (RFA)**

DC Colorectal Cancer Control Program

The District of Columbia, Department of Health (DOH) is soliciting applications from qualified applicants to provide services in the program and service areas described in this Notice of Funding Availability (NOFA). This announcement is to provide public notice of the Department of Health's intent to make funds available for the purpose described herein. The applicable Request for Applications (RFA) will be released under a separate announcement with guidelines for submitting the application, review criteria and DOH terms and conditions for applying for and receiving funding.

General Information:

Funding Opportunity Title:	DC Colorectal Cancer Control Program
Funding Opportunity Number:	FO-CHA-PG-00178-005
Program RFA ID#:	RFA#DC3C_11.24.17
Opportunity Category:	Competitive
DOH Administrative Unit:	Community Health Administration
DOH Program Bureau	Bureau of Cancer and Chronic Disease
Program Contact:	Tesha Coleman 202-442-8985
Program Description:	The DC Colorectal Cancer Control Program (DC3C) aims to increase the colorectal cancer screening rate of age eligible individuals in the District to greater than 80% by 2020, expanding partnerships by providing funding to a DC based health system to implement CDC's evidenced based strategies.
Eligible Applicants	Not- for profit, public and private organizations located and licensed to conduct business within the District of Columbia and experienced in providing primary care and cancer prevention services to underserved populations.
Anticipated # of Awards:	1
Anticipated Amount Available:	\$60,000
Floor Award Amount:	\$35,000
Ceiling Award Amount:	\$60,000

Funding Authorization

Legislative Authorization	301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Section 241(a) and 247b(k)(2)], as amended
Associated CFDA#	93.898
Associated Federal Award ID#	1 NU58DP006091
Cost Sharing / Match Required?	No
RFA Release Date:	11/24/2017
Pre-Application Meeting (Date)	12/01/2017
Pre-Application Meeting (Time)	2:00 PM
Pre-Application Meeting (Location/Conference Call Access)	899 North Capitol Street, NE Washington, DC 20002 3rd Floor Conference Room (306)
Letter of Intent Due date:	Not applicable
Application Deadline Date:	12/22/2017
Application Deadline Time:	6:00 PM
Links to Additional Information about this Funding Opportunity	DC Grants Clearinghouse http://opgs.dc.gov/page/opgs-district-grants-clearinghouse . DOH EGMS https://dcdoh.force.com/GO_ApplicantLogin2

Notes:

1. DOH 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.
2. Awards are contingent upon the availability of funds.
3. Individuals are not eligible for DOH grant funding.
4. Applicants must have a DUNS #, Tax ID#, be registered in the federal Systems for Award Management (SAM) and the DOH Enterprise Grants Management System (EGMS)
5. Contact the program manager assigned to this funding opportunity for additional information.
6. DOH is located in a secured building. Government issued identification must be presented for entrance.

DEPARTMENT OF HEALTH
HEALTH REGULATION LICENSING ADMINISTRATION

NOTICE OF MEETING

Board of Chiropractic

November 14, 2017

On November 14, 2017 at 1:30 pm, the Board of Chiropractic will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed at 2:30 pm to consult with the attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body, or to approve settlement agreements pursuant to 2-575(b)(4)(a); Preparation, administration, or grading of scholastic, licensing, or qualifying examinations pursuant to section 2-575(b)(6); To discuss disciplinary matters pursuant section 2-575(b)(9); To plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of the law or regulations, if disclosure to the public would harm the investigation pursuant to section 2-575(b)(14).

The meeting will be open to the public at 1:30 pm to discuss various agenda items and any comments and/or concerns from the public. After which the Board will reconvene in closed session to continue its deliberations at 2:30 pm.

The meeting location is 899 North Capitol Street NE, 2nd Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Chiropractic website www.doh.dc.gov/boc and select BOC Calendars and Agendas to view the agenda and any changes that may have occurred.

Executive Director for the Board of Chiropractic – Frank Meyers, JD - (202) 724-8755.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**NOTICE OF FUNDING AVAILABILITY****Housing Preservation Fund**

Polly Donaldson, Director, Department of Housing and Community Development (DHCD), announces a Notice of Funding Availability (NOFA) for funding. The funds for this NOFA are being made available from FY 2018 DHCD budget funds. This NOFA is being conducted pursuant to the DC Housing Preservation Strike Force Final Report Recommendations and the B22-0244 - Fiscal Year 2018 Budget Support Act of 2017, subtitle D. Housing Preservation Fund Establishment.

Under this NOFA, Grant funding will be provided to one or more organization to serve as fund administrator of the Housing Preservation Fund. Under the Preservation Fund, the Grantee will structure, administer, fund and manage a public-private fund to invest in the preservation of affordable housing in Washington, D.C. Duties may include but are not limited to 1) leverage public funds with private and or philanthropic funds to provide loans to borrowers for eligible activities; 2) market, underwrite, originate and service the preservation loans; 3) ensure compliance with the terms of the Housing Preservation Fund and 4) report quarterly to DHCD on the use of the Housing Preservation Fund. The goal of the Housing Preservation Fund is to aid in achieving the policy objective of the DC Housing Preservation Strike Force – “Preserving the affordability of 100% of its existing federally and city-assisted affordable rental homes.”

The competitive Request for Applications (RFA) under this NOFA will be released on or about November 10, 2017. The RFA package, including all application materials, will be available on the DHCD website, www.dhcd.dc.gov, on or about November 10, 2017.

Completed applications for the Housing Preservation Fund must be delivered on or before 4:00 p.m., Eastern Time, December 11, 2017 via thumb drive to DHCD, 1800 Martin Luther King Jr. Avenue, S.E., Office of the Director, c/o Danilo Pelletiere, Washington, D.C., 20020 and/or via email at preservationfundRFA@dc.gov. No paper copies will be accepted. No fax copies will be accepted.

No applications will be accepted after the submission deadline

Muriel Bowser, Mayor

Government of the District of Columbia

Brian T. Kenner, Deputy Mayor for Planning and Economic Development

Polly Donaldson, Director, Department of Housing and Community Development

**THE NOT-FOR-PROFIT HOSPITAL CORPORATION
BOARD OF DIRECTORS
NOTICE OF PUBLIC MEETING**

LARUBY Z. MAY, BOARD CHAIR

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 convene at 6:30 p.m. on Thursday, November 16, 2017. The meeting will be held at the R.I.S.E. Demonstration Center, 2730 Martin Luther King Jr. Ave., SE, Washington, DC 20032. 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).

DRAFT AGENDA

- I. CALL TO ORDER**
- II. DETERMINATION OF A QUORUM**
- III. APPROVAL OF AGENDA**
- IV. READING AND APPROVAL OF MINUTES**
Wednesday, October 25, 2017
- V. CONSENT AGENDA**
 - A. Dr. Julian R. Craig, Chief Medical Officer
 - B. Dr. Mina Yacoub, Medical Chief of Staff
- VI. EXECUTIVE MANAGEMENT REPORT**
Luis A. Hernandez, Chief Executive Officer
- VII. COMMITTEE REPORTS**
 - Patient Safety and Quality Committee
 - Finance Committee
- VIII. PUBLIC COMMENT**
- IX. OTHER BUSINESS**
 - A. Old Business
 - B. New Business
- X. ANNOUNCEMENTS**

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).

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD**NOTIFICATION OF 2017 BOARD MEETINGS (Updated)**

The District of Columbia Public Charter School Board (“PCSB”) hereby gives notice, of PCSB’s intent to hold a public meeting at 6:30pm on the following dates:

Monday, January 23, 2017

Monday, February 27, 2017

Monday, March 20, 2017

Monday, April 24, 2017

Monday, May 15, 2017

Monday, June 19, 2017

Monday, July 17, 2017

Monday, August 21, 2017

Monday, September 18, 2017

Monday, October 16, 2017

Wednesday, November 15, 2017 Closed Executive Session

Monday November 20, 2017 Closed Executive Session 5:30p.m.

Monday, November 20, 2017 Public Meeting 6:30p.m.

Wednesday, December 13, 2017 Closed Executive Session

Monday, December 18, 2017 Closed Executive Session 5:30p.m.

Monday, December 18, 2017 Public Meeting 6:30p.m.

For questions, please call 202-328-2660. An agenda for each meeting will be posted 48 hours in advance of the meetings on www.dcpsb.org. The location for all meetings is currently to be determined.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD**NOTIFICATION OF 2018 BOARD MEETINGS**

The District of Columbia Public Charter School Board (“DC PCSB”) hereby gives notice, of DC PCSB’s intent to hold a public meeting at 6:30pm on the following dates:

Monday, January 17, 2018 (Closed Executive Session)

Monday, January 22, 2018

Monday, February 26, 2018

Monday, March 19, 2018

Monday, April 23, 2018

Monday, May 21, 2018

Monday, June 18, 2018

Monday, July 16, 2018

Monday, August 20, 2018 (tentative)

Monday, September 17, 2018

Monday, October 15, 2018

Monday, November 19, 2018

Monday, December 17, 2018

For questions, please call 202-328-2660. An agenda for each meeting will be posted 48 business hours in advance of the meetings on www.dcpsb.org. The location for all meetings is currently to be determined.

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA
RECOMMENDATIONS FOR APPOINTMENTS AS NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after December 15, 2017.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on November 10, 2017. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

D.C. Office of the Secretary
Recommendations for appointment as DC Notaries Public

Effective: December 15, 2017

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Alford	Rose E.	The HSC Foundation 2013 H Street, NW, Suite 300	20006
Andaya	Kelly	Goshen CKS Corporation 1801 Columbia Road, NW	20009
Barnes	Stephanie N.	Alderson Court Reporting 1155 Connecticut Avenue, NW, Suite 200	20036
Becker	Trimble	the Group 1730 Pennsylvania Avenue, NW, Suite 500	20006
Benjamin	Leslie Renee	Self 440 L Street, NW, #314	20001
Bainbridge	Maureen	Bazillion Cobb Associates 1001 Connecticut Avenue, Suite 745	20036
Brogdon	Marsha	PNC Bank 1201 Wisconsin Avenue, NW	20007
Brown	Linda R.	Corning Incorporated 325 7th Street, NW, Suite 600	20004
Brunet	Denise M.	Capital Reporting Company 1250 I Street, NW, Suite 350	20005
Castro	Cecilia E.	Ain & Bank, PC 1900 M Street, NW, Suite 600	20036
Claque	Jennifer	DLA Piper, LLP 500 Eighth Street, NW	20004

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Coates	Carlos Lorenzo	The UPS Store #0740 1032 15th Street, NW	20005
Cole	DeGette A.	Office of the Comptroller of the Currency 400 7th Street, SW	20219
Cooper	Sam D.	Self 606 Columbia Road, NW	20001
Corley	Vanessa M.	Cahill Gordon & Rekindle 1990 K Street, NW	20006
Cromwell	Joan Catton	Self (Dual) 5020 Nebraska Avenue, NW	20008
Crumb	Jeffrey James	PNC Bank 1201 Wisconsin Avenue, NW	20007
Davis III	Tonie R.	Mayer Brown, LLP 1999 K Street, NW	20006
Del Cid	Roxana M.	Cahill Gordon & Reindel 1990 K Street, NW	20006
Desiderio	Lauren E.	Martone Construction Management, Inc 5165 MacArthur Boulevard, NW	20016
Diaz	Sandra	Freshfields Bruckhaus Deringer US, LLP 700 13th Street, NW	20005
DiRaimo	Edgar F.	US General Services Administration (GSA) 1800 F Street, NW, Suite 1475-B	20405

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Drumming	Daryl Paul	Self (Dual) 4400 16th Street, NW	20024
Duncan	Rolanda	Department of Justice 1301 New York Avenue, NW, Suite 700	20005
Ellis	Cassandra Elizabeth	TransPerfect 700 6th Street, NW	20001
Escobar	Arely	Fitzpatrick, Cella, Harper & Scinto 975 F Street, NW	20004
Fancher	Bridget S.	Key Title 5225 Wisconsin Avenue, NW, Suite 500	20015
Felder	Donte	DC Department of Employment Services 4058 Minnesota Avenue, NE	20019
Fergo	Therese	Self (Dual) 3980 Langley Court, NW, Apartment F612	20016
Gailliard	Sharolyn A.	Expert Legal Services Chartered 6665 13th Street, NW	20012
Gary	Tia	Andrews Federal Credit Union 5935 Georgia Avenue, NW	20011
Goff	Katherine Bateman	Government Accountability Project 1612 K Street, NW, Suite 1100	20006

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Gordon	Emily B.	Long & Foster 1529 B 14th Street, NW	20005
Gribbin	Jill Leann	Altria Client Services, LLC 101 Constitution Avenue, NW, Suite 400 West	20001
Hall Aguila	Sarah R.	CARECEN 1460 Columbia Road, NW, Suite C-1	20009
Hayes	Amanda L.	Kirkland & Ellis, LLP 655 15th Street, NW, Suite 1200	20005
Heiman	Debra H.	AFL-CIO Employees Federal Credit Union 555 New Jersey Avenue, NW	20001
Hernandez	Victor	Wells Fargo 3325 14th Street, NW, Tivoli Square	20010
High	Monica	Plastic Industry Association 1425 K Street, NW, Suite 500	20005
Hood	Miriam K.	Leo A Daly 1201 Connecticut Avenue, NW	20036
Jean	Scott	American Forest & Paper Association 1101 K Street, NW, Suite 700	20005
Johns	Nova Marie	Staas & Halsey, LLP 1201 New York Avenue, NW, Suite 700	20005
Johnson	Debra Ann	Self 610 57th Street, NE, Apartment 205	20019

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Johnson	Michelle D.	Self 50 Farragut Place, NW	20011
Kean	Chandra	U.S. House of Representatives H-154, The Capital	20515
Kelly	Laura T.	The Folger Shakespeare Library 201 East Capitol Street, SE	20003
Key	Maria S.	Sheppard Mullin Richter & Hampton, LLP 2099 Pennsylvania Avenue, NW, Suite 100	20006
Knox	Rose M.	Self 251 G Street, SW, Apartment A	20024
LaValle	Judith A.	Perkins & Will 1250 24th Street, NW, Suite 800	20037
Leon	Nancy M.	Self 3315 17th Street, NW	20010
Levine	Michele	Sheppard Mullin Richter & Hamilton, LLP 2099 Pennsylvania Avenue, NW	20006
Linn	Sheila B.	Holland & Knight, LLP 800 17th Street, NW, Suite 1100	20006
Lionetti	Huntington	Wells Fargo Bank, NA 1310 G Street, NW	20005
Lofton	Wanda M.	Self 4201 Butterworth Place, NW	20016

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Marshall	Maia C.	J Street Companies 1025 Thomas Jefferson Street, NW, Suite 170	20007
Matthews	Jill C.	Peace Corps 1111 20th Street, NW	20526
Mejia	Nancy	Bank of America 3 Dupont Circle, NW	20036
Miner	Anna E.	Chemonics International, Inc. 1717 H Street, NW	20006
Mitchell	Imani D.	TD Bank 1489 P Street, NW	20005
O'Sullivan	Maura B.	Nixon Peabody, LLP 799 9th Street, NW, Suite 500	20001
Payne	Denise F.	Washington First Bank 1025 Connecticut Avenue, NW	20036
Peace III	Roger Lee	Self 2200 32nd Place, SE	20020
Pilgrim	Crystal M.	United States District Court of District of Columbia 333 Constitution Avenue, NW	20001
Pitts	Regina Marie	Self (Dual) 911 5th Street, NE	20002
Ray	Jaysen	Self 1209 Savannah Street, SE	20032

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Reyes	Gloria E.	Self 5224 7th Street, NW	20011
Rorie	Joyce	Finnegan 901 New York Avenue, NW	20001
Rowe	Anet	Bank-Fund Staff Federal Credit Union 1818 H Street, NW	20433
Safra Bernal	Karen	Regan Associates, Chartered 1003 K Street, NW, Third Floor	20001
Sanford	Pamela	Mayer Brown, LLP 1999 K Street, NW	20006
Sazon	Christine	One Source Process 1133 13th Street, NW, Suite C-4	20005
Simms	William J.	UPS Store 1300 Pennsylvania Avenue, NW, Suite 190	20004
Smith	Rodnita	One Source Process 1133 13th Street, NW, Suite C-4	20005
Smith	Tara Florine	Esquire Deposition Solutions 1025 Vermont Avenue, NW, Suite 503	20005
Spriggs	Marvin L.	Sullivan & Cromwell, LLP 1700 New York Avenue, NW	20006
Stevenson	Barbarette	Arnold & Porter Kaye Scholer, LLP 601 Massachusetts Avenue, NW	20001

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Tamba	Kolli N.	Wells Fargo 1200 First Street, NE	20002
Taylor	Angela M.	RISM, LLC 1218 11th Street, NW	20001
Thompson	Artisha	Advisory Council on Historic Preservation 401 F Street, NW, Suite 308	20607
Tran	Huy	Chiaramonte Construction Company 2260 Minnesota Avenue, SE	20020
Vita	Andrew	One Source Process 1133 13th Street, NW, Suite C-4	20005
Weisbard	Ari	Self (Dual) 1336 Taylor Street, NW	20011
Wheeler	Deborah L.	LDR Investment Group 700 12th Street, NW, Suite 700	20005
Wilson	Quintella F.	EagleBank 700 7th Street, NW	20001
Young	Felicia	Self 1519 Shippen Lane, SE	20020
Zulager	Reid R.	Cogent Communications, Inc 2450 N Street, NW, 4th Floor	20037

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

D.C. Retail Water and Sewer Rates Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) D.C. Retail Water and Sewer Rates Committee will be holding a meeting on Tuesday, November 14, 2017 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dewater.com.

DRAFT AGENDA

- | | | |
|----|--------------------|-------------------------|
| 1. | Call to Order | Committee Chairperson |
| 2. | Monthly Updates | Chief Financial Officer |
| 3. | Committee Workplan | Chief Financial Officer |
| 4. | Other Business | Chief Financial Officer |
| 5. | Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Environmental Quality and Operations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Operations Committee will be holding a meeting on Thursday, November 16, 2017 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

- | | | |
|-----|-------------------------------|---|
| 1. | Call to Order | Committee Chairperson |
| 2. | AWTP Status Updates | Assistant General Manager,
Plant Operations |
| | 1. BPAWTP Performance | |
| 3. | Status Updates | Chief Engineer |
| 4. | Project Status Updates | Director, Engineering &
Technical Services |
| 5. | Action Items | Chief Engineer |
| | - Joint Use | |
| | - Non-Joint Use | |
| 6. | Water Quality Monitoring | Assistant General Manager,
Consumer Services |
| 7. | Action Items | Chief Engineer
Assistant General Manager,
Consumer Services |
| 8. | Emerging Items/Other Business | |
| 9. | Executive Session | |
| 10. | Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Finance and Budget Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Finance and Budget Committee will be holding a meeting on Tuesday, November 14, 2017 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dcwater.com.

For additional information please contact: Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

- | | |
|--|------------------------------|
| 1. Call to Order | Committee Chairman |
| 2. October 2017 Financial Report | Director of Finance & Budget |
| 3. Agenda for December Committee Meeting | Committee Chairman |
| 4. Adjournment | Committee Chairman |

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Order No. 13991-A of Curt Hansen, pursuant to 11 DCMR Subtitle Y § 704¹, for a modification of significance to revise BZA Order No. 13991, to permit the addition of an accessory fast food establishment to an existing retail grocery store, to expand the retail use to the basement, to change the operating hours, to increase the number of employees from two to seven, and to increase the number of seats from zero to eighteen in the RF-1 Zone at premises 522 ½ K Street N.E. (Square 830, Lot 56).

The original application (No. 13991) was pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from drug store-food products, first floor and basement for storage, to grocery and delicatessen, first floor and basement for storage, in an R-4 District at premises 522 ½ K Street, N.E. (Square 830, Lot 56).

HEARING DATES (Case No. 13991):	July 20 and September 14, 1983
DECISION DATE (Case No. 13991):	October 5, 1983
FINAL ORDER ISSUANCE DATE (Case No. 13991):	November 9, 1983
MODIFICATION HEARING DATES:	September 20 and October 18, 2017 ²
MODIFICATION DECISION DATE:	October 18, 2017

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF SIGNIFICANCE

BACKGROUND

On October 5, 1983, in Application No. 13991, the Board of Zoning Adjustment (“Board” or “BZA”) approved a request by Kwang B and In A Jeon, the then owner of the building located at 522 K Street, N.E. and also at the time the proprietor of the retail business located at that address, for a special exception under Paragraph 7106.11 in the 1958 Zoning Regulations to allow a change from a nonconforming use of drug store-food products, first floor and basement for storage, to another nonconforming use of grocery and delicatessen (sandwiches and hot food) on the first floor and storage in the basement. The Board issued Order No. 13991 on November 9, 1983, approving the special exception requested.

¹ The original application was filed under the Zoning Regulations (Title 11, DCMR) which were then in effect (the “1958 Zoning Regulations”) but which were repealed on September 6, 2016 and replaced with new text of Title 11, DCMR (the “2016 Regulations”). Also, all of the zone district names have been changed in the 2016 Zoning Regulations. Other than the description of the original application and its caption, the other references in this Order to provisions contained in Title 11 DCMR are to the 2016 Regulations. The repeal of the 1958 Regulations and change of zone district name has no effect on the validity of the Board’s decision in Application No. 13991 or the validity of this order.

² The hearing was originally scheduled for September 20, 2017; however, on September 6, 2017, the Board granted the request of the ANC to postpone the hearing (Exhibit 23) and postponed the hearing to October 18, 2017.

As noted by the Office of Planning (Exhibit 28), Finding No. 10 in Order No. 13991 specified that the applicant at the time had proposed to limit the business' operations, as follows:

1. Hours of operation to be limited to 8:00 am to 8:00 pm Monday to Saturday and 8:00 am to 6:00 pm on Sundays;
2. The number of employees would remain at two;
3. Service would be carryout only;
4. There would be no tables or chairs for on-site sit down service.

(Order No. 13991, Finding No. 10, pg. 2.)

The approval in Case No. 13991 was subject to two enumerated conditions, namely:

1. Exterior signage shall be limited to one non-illuminated sign, located at the K Street entrance.
2. Two garbage cans shall be placed on the subject site, and all parts of the lot shall be kept free of litter and debris.

(Exhibit 3.)

According to the current owner who is the applicant in the modification request herein (the "Applicant"), this 100-year-old building has had commercial uses on the first floor and in the basement for at least 70 years. In the 1940s, the first floor and basement were used as a pharmacy and convenience store. By the 1970s, the store was being operated as a convenience store.

In 1983, the then building owner, Kwang B. Jeon and his spouse, In A. Jeon, applied to this Board for a special exception to change the use from a nonconforming use for drug store-food products to one for grocery store and delicatessen. That application was granted in October 1983 and Order No. 13991 was issued on November 9, 1983.

Subsequent to the Board's 1983 approval, the ownership of the market changed but the uses continued. The Applicant and current owner of the building indicated that, based on the Board's 1983 order, the building was renovated to incorporate a small commercial kitchen with a wood/gas fired brick oven for pizza and a coffee bar. The market also continues to sell groceries.

According to the Applicant, shortly after Application No. 13991 was granted, Kwang Jeon, who had been operating the store, sold the store, but not the building, to the Kim family, who operated the store as a convenience store with a deli counter, selling hot and cold sandwiches and soup. It is from this approval that the Applicant is seeking a modification.

In the early 1990s, the Applicant, Curt Hansen, acquired the property from Kwang Jeon, but continued to rent the store to the Kims who continued to operate it. The Kims then sold the business to Khalid Ibnoujala, who continued to operate the business as a convenience store through 2014. Subsequently, the Applicant and Mr. Ibnoujala planned a joint venture, wherein the Applicant would renovate the store and still produce hot food, but this time in a wood fired stove. The Applicant noted that prior to beginning the renovations, he met with District officials, including zoning, to confirm that the renovations and intended use were compliant with the existing Certificate of Occupancy.

The approval in Case No. 13991 allowed the then owner to cook and prepare food in the market. As noted above, the market continued to operate under that ownership from 1983 to 2015. In 2015, the market that had been trading as the ABC Market closed for renovations and re-opened under a new name, Old City MAO, LLC, trading as Old City Market and Oven. Old City Market and Oven opened for business in November 2016 and has been in continuous operation since that date. The Applicant stated that prior to Old City Market and Oven's opening in November 2016, a District zoning inspector came and inspected the premises regarding all aspects of the store, and as a result, a Certificate of Occupancy was issued.

The Applicant indicated that prior to the latest renovations, the operator of the business used the first floor of the building for retail sales and the basement level contained a bathroom and storage rooms. After the market closed for renovations, the basement was renovated and the pre-existing bathrooms were completely gutted and renovated to be accessible for persons with disabilities. The modification application requests expansion of the retail use to the basement.

The Applicant also noted that the building has two bays that are original to the building. During the time Mr. Ibnoujala operated the store, he used the 6th Street bay as a point of sale space and sat behind a plywood and Plexiglas wall. The K Street bay held a freezer. After the Applicant completed the renovations, the windows were restored in the bays and a nine-inch counter installed just below each picture window. The Applicant indicated that the intended purpose of the counters was to allow patrons to have a space to stand and drink their coffee while waiting for their food to be prepared. The Applicant set up three small tables with seating downstairs. Also, four stools were brought in so patrons could sit at the bay windows.

After installing the seating described above, the Applicant was informed by the Zoning Administrator's office that the eight chairs and four stools were not permitted under the current Certificate of Occupancy and that the Applicant would need to apply for a modification of significance to the approval in Order No. 13991 in order to add seating and provide any other

changes to how the store was operated. The Applicant removed the chairs and stools and applied for this modification of significance.

MOTION FOR MODIFICATION OF SIGNIFICANCE

On June 13, 2017, Curt Hansen, the current owner of the property, (the “Applicant”), submitted a request for a Modification of Significance to the approval granted by the Board in Order No. 13991. (Exhibit 1-9.) The Applicant is seeking a modification to Order No. 13991 to:

1. Add an accessory fast food use to an existing retail grocery store/deli;
2. Expand the retail grocery use to the basement; and
3. Modify the conditions of Order No. 13991 to:
 - a. Change the hours of operation;
 - b. Increase the number of employees from two to seven; and
 - c. Increase the number of seats from zero to 18.

The modification application was accompanied by a memorandum from the Zoning Administrator (“ZA”), dated May 10, 2017, in which the ZA referred the Applicant to the Board for a Modification of Significance for the following revisions:

1. Addition of accessory Fast Food Establishment to Retail Grocery Store/Deli;
2. Expansion of the retail use to the basement (*identified as storage facilities under Paragraph 4 of the Findings of Fact*)³;
3. Change the operating hours from 8:00 am to 8:00 pm Monday through Saturday and 8:00 am to 6:00 pm on Sundays (*Paragraph 10 of the Findings of Fact*) to 9:00 am to 9:00 pm Monday through Saturday and 9:00 am to 6:00 pm on Sundays;
4. Increase the number of employees form two (*Paragraph 10 of the Findings of Fact*) to seven; and
5. Increase the number of seats from 0 seats (*Paragraph 10 of the Findings of Fact*) to 18 seats total (10 seats in the basement, and eight seats on the first floor).

(Exhibit 4.)

³ The Findings of Fact referenced by the ZA are to Order No. 13991.

The Applicant filed submissions and testified as to how the proposed modification of significance meets the burden of proof for the additional relief requested. (Exhibit 5.)

The Merits of the Request for Modification of Significance

Pursuant to Subtitle Y § 704.1, any request for a modification that does not meet the criteria for a minor modification or modification of consequence⁴ requires a public hearing and is a modification of significance. The Applicant's request complies with 11 DCMR Subtitle Y § 704, which provides the Board's procedures for considering requests for modifications of significance.

In the current case, the Applicant, based on the ZA's referral, submitted an application for a modification of significance to revise BZA Order No. 13991, to permit the addition of an accessory fast food establishment to an existing retail grocery store, to expand the retail use to the basement, to change the operating hours, to increase the number of employees from two to seven, and to increase the number of seats from zero to eighteen in the RF-1 Zone. As the ZA referral required the Applicant to seek a modification of significance and that was how the application was stated, it met the definition of a modification of significance and a public hearing was held.

Pursuant to Subtitle Y § 704.6, a public hearing on a request for a modification of significance shall be focused on the relevant evidentiary issues requested for modification and any condition impacted by the requested modification. Pursuant to Subtitle Y § 704.7, the scope of a hearing conducted pursuant to Subtitle Y § 704.1 is limited to the impact of the modification on the subject of the original application, and does not permit the Board to revisit its original decision. Pursuant to Subtitle Y § 704.8, a decision on a request for modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application. Finally, pursuant to Subtitle Y § 704.9, the filing of any modification request under this section does not act to toll the expiration of the underlying order and the grant of any such modification does not extend the validity of any such order.

Notice. Pursuant to Subtitle Y §§ 704.4, and 704.5, all requests for modifications of significance must be served by the moving party on all parties in the original proceeding at the same time that the request is filed with the Board. The Applicant served the Office of Planning ("OP") and the affected Advisory Neighborhood Commission ("ANC"), ANC 6C. (Exhibit 5.)

Also, pursuant to Subtitle Y § 400.4, the Office of Zoning provides notice upon its acceptance on behalf of the Board of an application requiring a public hearing to the Applicant, the affected ANC, the affected Single Member District ANC Commissioner, in this case ANC 6C06, OP, the District Department of Transportation ("DDOT"), and the Councilmember for the ward within which the property is located. Pursuant to Subtitle Y § 402.1, the Board also provides notice of

⁴ See, Subtitle Y §§ 703.3 and 703.4.

the public hearing to the applicant, the affected ANC, the affected Single Member District ANC Commissioner, all owners of property within 200 feet of the subject property, any leaseholders on the subject property, OP and all other appropriate government agencies, and the Councilmember for the ward within which the property is located.

Proper and timely notice of the application was provided to ANC 6C, the only other party to Application No. 13991, the ANC Commissioner for Single Member District 6C06, OP, DDOT, the Ward Councilmember for the Property, and the Council Chairman and the At Large Councilmembers. Also, notice of the public hearing was provided to the Applicant, ANC 6C, all owners of property within 200 feet of the subject property, and the Ward Councilmember. (Exhibits 10-21.)

Reports. ANC 6C originally filed a motion to postpone the hearing, which was granted on September 6, 2017. (Exhibit 23.) Subsequently, ANC 6C submitted a report dated October 16, 2017, in support of the application for a modification. The ANC report indicated that at a regularly scheduled, properly noticed public meeting on October 11, 2017, at which a quorum was present, the ANC voted 6:0 to support the application subject to conditions. The ANC noted in its report that its “chief concern is to ensure that this business – whether under the ownership of the applicant or any successor – retains its principal use as a grocery store, with the proposed fast-food use remaining ‘clearly and subordinate to’ that principal use.” As to the conditions, the ANC noted that:

1. ANC 6C supports the request for 18 indoor seats so long as they are not served by wait staff. They expressed concern that adding an equal number of outdoor seats would cause the fast-food use to be so significant an operation so that it would no longer be secondary to the principal grocery use. Thus, they support authorization for up to six additional seats outside, subject to DDOT/Public Space approval.
2. The ANC supports expanding the hours of operation to 7:00 am to 9:00 pm Monday – Saturday and 7:00 am to 6:00 pm Sunday.
3. ANC 6C supports allowing delivery service during the full hours of operation, subject to limitation, as recommended by the Office of Planning, that all deliveries be made by bicycle or on foot.
4. ANC 6C supports the application’s request, as proposed, to expand the retail use to the basement and the increase in the number of employees.

(Exhibit 31.)

ANC Commissioners Edelman and Eckenwiler testified in support and provided further discussion of the ANC’s proffered conditions.

OP submitted a timely report. The report, dated October 6, 2017, recommended approval of the requested modification with nine conditions. (Exhibit 28.) The Board accepted seven of the nine conditions.

DDOT submitted a report stating that it had no objection to the granting of the request with one condition. (Exhibit 27.)

A petition of support (Exhibits 8 and 9) as well as five letters of support from neighbors for the application were submitted to the record. (Exhibits 25, 30, 32, and 33.)

Burden of Proof. As directed by 11 DCMR Subtitle X § 901.2 and Subtitle Y § 704, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a modification of significance to revise BZA Order No. 13991, to permit the addition of an accessory fast food establishment to an existing retail grocery store, to expand the retail use to the basement, to change the operating hours, to increase the number of employees from two to seven, and to increase the number of seats from zero to eighteen in the RF-1 Zone at premises 522 ½ K Street N.E.. With its application, the Applicant submitted the required documents in conjunction with the application, including a statement demonstrating how the application meets the burden of proof for the Modification of Significance. (Exhibit 5.) The Applicant also provided testimony as to how the application meets the burden of proof.

The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board also concludes that in seeking a modification of significance to Case No. 13991, the Applicant has met its burden of proof under 11 DCMR Subtitle Y § 704.

As noted, the only parties to the case were the ANC and the Applicant. Accordingly, a decision by the Board to grant the request would not be adverse to any party and therefore an order containing full finding of facts and conclusions of law need not be issued pursuant to D.C. Official Code § 2-509(c) (2012 Repl.). Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification of significance of the Board's approval in Application No. 13991-A is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7 AND TO THE FOLLOWING CONDITIONS:**

1. Exterior signage shall be limited to one non-illuminated sign, located at the K Street entrance.
2. At least two garbage receptacles shall be placed on the subject site, and all parts of the lot shall be kept free of litter and debris. Commercial trash pick-up shall be a minimum of two times per week.
3. There shall be a maximum of seven full-time employees.

**BZA APPLICATION NO. 13991-A
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- 4. Hours of operation shall be limited to 7:00 AM to 9:00 PM, Monday to Friday; 9:00 AM to 9:00 PM, Saturdays; and 7:00 AM to 6:00 PM on Sundays.
- 5. Deliveries to the market shall be between the hours of 9:00 AM and 5:00 PM.
- 6. Seating is limited to 18 seats, anywhere in the building.
- 7. If seating is allowed in the public space, it will be in addition to the seating allowed in Condition 6.

In all other respects, Order No. 13991 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON OCTOBER 5, 1983: 5-0

(Maybelle T. Bennett, Carrie Thornhill, William F. McIntosh, Douglas J. Patton, and Charles R. Norris to GRANT.)

VOTE ON MODIFICATION OF SIGNIFICANCE ON OCTOBER 18, 2017: 4-0-1

(Frederick L. Hill, Anthony J. Hood, Lesylleé M. White, and Carlton E. Hart to APPROVE; 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: October 27, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19298 of Evergreen Properties II LLC, as amended¹, pursuant to 11 DCMR Subtitle X § 901.2 for a special exception under the side yard requirements of Subtitle E § 5108, (Lots 124 and 126), and pursuant to 11 DCMR Subtitle X § 1002 for a variances from the alley lot height requirements (for Lot 125) under Subtitle E § 5102.1, from the nonconforming structure requirement (for Lots 124 and 126) under Subtitle C § 202.2, from the alley centerline setback requirements under Subtitle E § 5106.1, and from the parking requirements (for Lot 125) under Subtitle C § 701.5², to allow the renovation and addition to the two existing alley dwellings (Lots 124 and 126), and the construction of a new alley dwelling (Lot 125), at premises located at 1901, 1903, and 1905 9½ Street, N.W. (Square 361, Lots 124, 125 and 126).

HEARING DATES: July 12, 2016, September 20, 2016, and November 16, 2016³

DECISION DATE: November 16, 2016

DECISION AND ORDER

Evergreen Properties II LLC, the property owner of the subject premises (the “Owner” or the “Applicant”) submitted a revised application for area variance and special exception relief to allow the renovation and expansion of two existing alley dwellings located at 1901 9½ Street and 1905 9½ Street, N.W., and to allow the construction of a new alley dwelling at 1903 9½ Street, N.W. For the reasons explained below, the Board of Zoning Adjustment (the “Board” or “BZA”) voted to approve the revised application after the public hearing was completed on November 16, 2016.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated April 25, 2016, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 1; Advisory Neighborhood Commission (“ANC”) 1B, the ANC for the area within which the subject property is located; and Single Member District ANC 1B02. Pursuant to 11-Y DCMR § 402.1, on May

¹ As will be described more fully in this Decision, this application was revised several times. The application was filed on April 21, 2016 under the 1958 Zoning Regulations (“ZR 58”) and later revised and filed under the 2016 Zoning Regulations (“ZR 16”). The caption has been changed to reflect the relief that was ultimately considered by the Board.

² Although parking reductions may be granted by special exception pursuant to 11-C DCMR § 703, the Applicant’s request does not “include a management plan approved by the District Department of Transportation,” as required by Subtitle C § 703.4.

³ The Applicant requested postponements from the first two hearing dates so that he could continue to work with neighbors and the Advisory Neighborhood Commission (“ANC”) 1B. (Exhibits 28 and 51.)

19, 2016, the Office of Zoning mailed notice of the hearing to the Applicant, ANC 1B, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on May 27, 2016. (63 DCR 23).

ANC Report. ANC 1B, an automatic party to this proceeding, submitted two reports regarding the application.

In its first report, dated September 6, 2016, the ANC indicated that at a regularly scheduled monthly meeting with a quorum present, the ANC voted 9-0-0 to recommend approval of the application, in part, and denial of the application, in part. (Exhibit 48.) The report stated, among other things, that the Applicant had not made a “showing [of] economic hardship”.

In a later report submitted on November 11, 2016, ANC 1B indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC again voted 9-0-0 to recommend approval, in part, and denial, in part. The ANC specifically recommended denial of the Applicant’s request for a height variance to construct a new dwelling, and also recommended denial of the Applicant’s request for a variance to expand the existing nonconforming dwellings. (Exhibit 56.)

OP Report. Due to the significant changes in the application, OP submitted three reports to the record. The first report, dated September 9, 2016, reviewed a proposal for three flats that required a use variance for three flats on three alley lots, area variances for height relief, nonconforming structure relief, alley centerline setback relief, and parking relief, and a special exception for side yard relief. (Exhibit 45.) In that report, OP recommended denial of the use variance and the area variances for height and nonconforming structure requirements, but indicated it would approve a modified project that eliminated these aspects of relief. (Exhibit 45.)

The second OP report, dated September 16, 2016, analyzed a modified proposal that eliminated the flats and related use variance request, which called for single alley lot dwelling units. (Exhibit 60.) Again, OP recommended denial of the request for a height variance and for a variance to expand a nonconforming structure, but recommended approval of the other relief requested.

Lastly, OP submitted a third report dated November 9, 2016 which considered additional material submitted by the Applicant (Exhibits 53 and 54) and, again, recommended denial of the height variance and the variance to expand the existing nonconforming structures, but supported the other relief requested, which included the variance for alley centerline setback and parking, as well as the special exception from side yard requirements. (Exhibits 65.)

With respect to the height variance and nonconforming structure variances, OP rejected the Applicant’s assertion that a confluence of factors gave rise to an exceptional situation that resulted in a practical difficulty. OP also stated that the small size of the alley lots was not “unique” for alley lots in the RF-1 zone, as claimed by the Applicant, and that the confluence of factors claimed did not relate to the proposed additional height. Lastly, OP asserted that the

Applicant's mistaken belief that the alley lots were "street" lots is not a justification for the variance, because a property owner must conduct "due diligence" when purchasing and developing a property. (Exhibit 65.)

DDOT Report. DDOT reviewed an early version of the application proposing, among other things, six dwelling units (three flats) and no parking. In its report dated September 9, 2016, DDOT focused on the requested relief from the off-street parking requirements, and indicated it had no objection to this relief. (Exhibit 46.) DDOT did not submit a report regarding the final proposal.

Request for Party Status. The Board received a request for party status in opposition from Brad Gudzinis, the owner and occupant of 1917 9½ Street, N.W., dated June 26, 2016. (Exhibit 27.) Mr. Gudzinis argued that the "scale of development" of the proposed project would "take over the alley" and "increase population density...at least 40 percent in close proximity to [his] property". (Exhibit 27, pgs. 1-2.) The Applicant objected to the granting of the party status application on various grounds. (Exhibit 53.) However, Mr. Gudzinis failed to appear at the public hearing on November 16, 2016. As a result, the Board invoked Subtitle Y § 404.10⁴, and the request for party status was deemed withdrawn.

Persons in Support / Opposition. On June 14, 2016, Tefera Zewdie and Hiwot Gebru, owners of 1918 9th Street N.W., the property immediately adjacent to the property, submitted a letter of support for the project. (Exhibit 26.) No letters in opposition were submitted to the record.

Applicant's Case. The Applicant provided evidence and testimony from Eric Jenkins, Principal of Evergreen Properties II LLC, the owner of the subject property. The Applicant also provided evidence and testimony from Bill Bonstra, Principal of Bonstra Haresign Architects, and Tanya Ally of Bonstra Haresign. The evidence and testimony described the difficulties of providing zoning compliant buildings on the subject lots.

FINDINGS OF FACT

The Subject Properties and Nearby Property

1. The subject properties are located at 1901, 1903, and 1905 9½ Street, N.W. (Square 361, Lots 124, 125, and 126 respectively).
2. The subject properties are narrow rectangular properties measuring 718, 705, and 740 square feet ("sf") in land area, respectively.
3. The subject properties are located in the RF-1 Zone District and the Greater U Street Historic District.

⁴ This provision states in relevant part: A person requesting party status must be present at the public hearing or meeting at which the request is being considered; Failure of the person or their representative to appear shall be deemed to constitute the withdrawal of the party status request.

4. Lot 125 (1903 9½ Street), the middle lot, is currently unimproved. A two-story brick row dwelling existed at the property from when it was built in 1889 until it was demolished about 1959. (Exhibit 8A, Historic Preservation Review Board (“HPRB”) Staff Report and Recommendation.)
5. The other two properties, at Lots 124 and 126, are currently improved with two vacant two-story row dwellings. These buildings were also constructed in 1889, and though still existing, were structurally impacted by the demolition of the building on Lot 125. (Exhibit 8A.)
6. A nearby building at 1915 9½ Street was demolished and replaced in 2002. Today, the building is a three-story structure consisting of two stories of brick and a third floor with mansard roof above. (Exhibit 8A.)

Discovery that 9½ “Street” is an Alley

7. Before purchasing the subject properties, the Applicant believed that 9½ Street was a public street, and had no knowledge that it was, in fact, an alley. As a result of this belief, the Applicant assumed the lots could be developed as street lots.⁵
8. The Applicant claims that he did his “due diligence” before the purchase of the properties and has submitted a chronology detailing the “due diligence” that he undertook. (Exhibit 54.)
9. Among his efforts the Applicant did the following:
 - a. The Applicant conducted a visual survey of the thoroughfare. He observed available street parking, observed buildings up to three stories that were above 30 feet in height, and observed that the name of the thoroughfare was 9½ “Street”.
 - b. The Applicant reviewed the Utility Map for the properties and found that utility service was available directly from 9½ Street.
 - c. The Applicant examined the most recent applicable HPRB case on the thoroughfare, at 1915 9½ Street. The property owner at that location had built a structure that appeared to be three levels above grade and 30 feet in height. As no zoning relief had been sought in this case and the building permits had issued as a matter-of-right, the Applicant assumed the thoroughfare was a street.

⁵ Street lots in the RF 1 zone may generally be built up to 35 feet in height and may contain up to three stories. (11 DCMR Subtitle E § 303.1.)

- d. The Applicant examined plans for the redevelopment of the nearby “Grimke School”⁶ which proposed three story townhomes fronting on the west side of 9½ Street.
 - e. As part of the acquisition process, the Applicant completed a title and survey for the properties. Both indicated the properties were located on a “street”. (Exhibit 54.)
10. After the purchase was completed, the Applicant conferred with the D.C. Surveyor’s Office, and learned that 9½ Street was not a “street”, but a named alley. Accordingly, the BZA application was revised to include the necessary relief from various alley lot requirements.

The Proposal and BZA Application

11. The BZA application was originally submitted under the Zoning Regulations of 1958 (“ZR 58”) as a variance application for relief from the lot occupancy requirements, the rear yard requirements, and the off-street parking requirements, to construct a new three-story building and additions to two existing buildings, for three flats on a street in the R-4 District (now RF-1 zone).
12. The original hearing was scheduled for July 12, 2016; however, at the Applicant’s request, the Board postponed the hearing date to September 20, 2016, to allow the Applicant to revise the plans and obtain support from the Advisory Neighborhood Committee (“ANC”) 1B and other community members. ZR 58 was repealed on September 6, 2017 and replaced with the Zoning Regulations of 2016 (“ZR 16”). Among other things, the new text eliminated the term “one-family dwelling” with “dwelling units”. Existing zoning map designations were renamed. Because the case was postponed without being heard before the effective date of ZR 16 and therefore not vested under ZR 58, the Applicant was required to submit the Application under the ZR 16. (*See* 11-A DCMR § 102.2.)
13. The original revisions under ZR 16 made it so that rear yard relief, lot occupancy relief, and lot occupancy relief were no longer necessary. Upon discovery of the alley, the Applicant amended the application to request a use variance from the alley lot residential requirements (11-U DCMR § 600.1(e)), and area variances from the alley lot height requirements (11-E DCMR § 5102.1), the prohibition against expansion of nonconforming structures (11-C DCMR § 202.2), the parking requirements (11-C DCMR § 701.5), and the alley centerline setback requirement (11-E DCMR § 5106.1.)
14. During an ANC 1B Zoning committee meeting held in August, 2016, the Applicant was asked to explore other construction options in order to make a project with three one-

⁶ It is noteworthy that the “Grimke School” project is overseen by the District’s Deputy Mayor of Economic Development.

family dwelling units viable, as the committee and community were not in support of flats and the requested residential relief. The Applicant received similar feedback from OP.

15. The Applicant withdrew its request for a use variance to construct a flat on each lot and, in its place, proposed one dwelling unit on each alley lot. Also, the Applicant amended his request to include special exception relief for the side yard setback requirements imposed on alley lots abutting non-alley lots. (11-E DCMR § 5108.)

The Required Zoning Relief

16. Subtitle E § 5102.1 of ZR 16 imposes a 20 foot and two story maximum for buildings on alley lots. The proposed height of the building to be newly constructed at 1903 9½ Street (Lot 125) is 30 feet 5.5 inches. (Exhibit 45, OP Report, pg. 3.) Therefore, an area variance is needed from this requirement.
17. The existing buildings at 1901 and 1905 9½ Street are 20 feet 10 inches and 21 feet, respectively, in height and are therefore nonconforming with respect to the 20-foot height limit for alley lots. The Applicant proposes to construct these buildings to a height of 30 feet five inches and 30 feet 5.5 inches respectively. Therefore, an area variance is required under Subtitle C § 202.2 for the expansion of nonconforming structures. (Exhibit 45.)
18. Subtitle E § 5106 requires a 12-foot minimum setback from the alley centerline. The new building located at 1903 9½ Street will only be set back seven feet six inches from the centerline. Therefore, relief is required from this provision. (Exhibit 45.)
19. Subtitle C § 701.5 requires one parking space for the new building at 1903 9½ Street. Since no parking will be provided, relief is required from this provision. (Exhibit 45.)⁷
20. Subtitle E § 5105.1 requires a minimum side yard of five feet where an alley lot abuts a non-alley lot. The alley lots at 1901 9½ Street and 1905 9½ Street abut non-alley lots and have no proposed side yards. Relief from this requirement is allowed by special exception pursuant to Subtitle E § 5108. (Exhibit 45.)

Exceptional Conditions at the Properties

21. The alley on which these lots are located is not a typical alley, as most of the alley measures 30 feet in width, which is the width of a street; however, the width narrows to 15 feet in one small portion of the alley.
22. The subject lots front on the small portion of the alley that narrows to 15 feet in width.

⁷ No parking is proposed at the 1901 or 1905 properties; however, those properties are not required to provide parking under ZR 16.

23. The subject lots are smaller than the other lots on the alley. (718 sf, 705 sf, and 740 sf). The other seven lots on the alley range from 816 to 875 sf. This difference of approximately 100 sf is significant on a lot of this small size.
24. The subject lots are also narrower than the other lots on the alley.
25. The existing buildings at 1901 and 1905 9½ Street are subject to structural inefficiencies, including but not limited to: damaged and deteriorated second floor joists, numerous evidential stains on the underside of the roof sheathing, deteriorating masonry and mortar on the side walls, and poorly placed concrete masonry unit wall materials. (Exhibit 43E, Assessment of Structural Conditions by Structura, Inc.)
26. In addition to those structural issues, the building at 1901 9½ Street has extensive cracking on the front façade and bulging masonry at the second-floor line. The building at 1905 9½ Street is plagued by poor subfloor planking, and the base of the brick façade at the front elevation is not vertically aligned with the foundation below. (Exhibit 43A.)
27. Because the properties are located in an historic district, the renovation and construction at these properties requires review by the HPRB, which advises the Mayor's Agent for Historic Preservation. (*See* 10-C DCMR § 106.2.) While HPRB approved the design in concept, it was contingent on a 50% setback for the third story of each of the proposed dwellings. The third story setback requirement imposed by HPRB limits the interiors space within the three buildings.

Practical Difficulties

28. As a result of the small-sized lots, it is difficult to provide marketable spaces consistent with other existing homes on the alley.
29. The Board credits the testimony of Bill Bonstra of Bonstra/Haresign Architects regarding the necessity of a quality third bedroom in order to offer a marketable dwelling unit. According to Mr. Bonstra, the only way to accomplish that is to build a partial third story. The third bedroom would not fit in a two-story building. Also, it would not be feasible to locate the third bedroom in a basement because of the lack of light and air, and also because of the difficulty in excavating below fragile buildings. (BZA Public Hearing Transcript of November 16, 2016, p. 263-264.)
30. As a result of the various physical and structural conditions at the existing properties, it is costly to renovate the existing buildings. The structural and other physical conditions make it economically infeasible to complete the project without an addition to the existing buildings or without the partial third stories on the three buildings.

31. According to the Applicant's analysis, the proposed project, will result in a net loss of \$228,205. Without the height variance allowing the partial third floor, the project would result in a greater loss of \$535,730. (Exhibit 43G.) The Board credits the Applicant's finding that without the height variance, the Applicant would sustain a significant loss. Granting the height variance will merely allow the financial loss to be more manageable.
32. Because the properties are all land locked it is impossible – not merely difficult – to provide access to any off-street parking.
33. Because the properties abut a portion of the alley that is only 15 feet wide, it is practically difficult to provide a 12-foot setback from the centerline of the alley.
34. The fact that the properties have been idle since the 1970s is evidence of the practical difficulty in developing a zoning-compliant project.

Impact of the Proposed Project

34. The additional height created by the partial third stories on the buildings will not adversely impact surrounding properties. As HPRB found, the redesigned third stories will be compatible with the two-story character of the alley. In fact, with the 26.5-foot setback, the partial third stories will not be visible from the front of the buildings. (Exhibit 8C.)
35. There are other nearby buildings that exceed the 20-foot maximum allowable height, such as a building on the western side of the alley that is 40 feet high and takes up a large part of the block.
36. Even with the third floor partial stories, the overall density is not inconsistent with the general density on the alley.
37. Granting the alley centerline setback variance will have no adverse impacts, as the setback will be consistent with the other properties on the alley.
38. This portion of the alley has been neglected for years, resulting in two deteriorated properties and a vacant space in between them. Granting the requested relief will enhance this portion of the alley.

CONCLUSIONS OF LAW

Variance Relief

The Board is authorized to grant variances from the strict application of the Zoning Regulations where “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property. . . 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 zoning regulation “would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property.. .” D.C. Official Code 6-641.07(g)(3) (2008 Supp.); (11-X DCMR § 1002.)

A showing of “practical difficulties” must be made for an area variance, while the more difficult showing of “undue hardship” must be made for a use variance. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). The Applicant in this case is requesting area variances; therefore, it had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in a practical difficulty in complying with the Zoning Regulations. Lastly, the Applicant had to show 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. (11-X DCMR § 1002.)

The “exceptional situation or condition” of a property can arise out of “events extraneous to the land,” including the zoning history of the property. See, e.g. *De Azcarate v. Board of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978), and see *Monaco v. Board of Zoning Adjustment*, 407 A.2d 1091, 1097, and 1098 (D.C. 1979). See also *BZA Order No. 17264* (2005). The “exceptional situation or condition” can also arise out of the structures existing on the property itself. See, e.g., *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974).

In order to prove "practical difficulties," an applicant must demonstrate first that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 164, 170 (D.C. 1990).

Exceptional Condition

As detailed in the Findings of Fact, the Board finds that the properties face exceptional situations or conditions. A primary factor is the location of the properties. The subject lots are the only lots on the alley that front on the portion of the alley that narrows to 15 feet. Other exceptional conditions include the small size of the lots compared to other lots on this alley, the narrowness of the lots, many structural inefficiencies that add to the cost of improving these three lots, and the HPRB setback requirement.

Practical Difficulty

The Board finds that, due to these exceptional situations and conditions, the Applicant would face a practical difficulty if the Zoning Regulations were strictly applied. As demonstrated in the documents provided by the Applicant, which include an assessment of structural conditions, construction estimates, and estimates of profit/loss under various development scenarios, the project would incur even greater financial losses without zoning relief and create an unnecessary

burden for the Applicant. The area variance relief helps to alleviate the significant costs of restoring two deteriorating buildings, the problems with light created by the unique location of the lots, and the inefficiencies created by small, narrow lot sizes. Not only will relief make the space more efficient, but it allows for more light to enter the buildings. Further, as noted, because the properties are all landlocked, it is impossible to provide access to any off-street parking.

Substantial Detriment to the Public Good and Harm to the Zone Plan

Turning to the third prong of the variance test, the Board concludes that the requested variances can be granted without substantial detriment to the public good. As detailed in the Findings of Fact, the HPRB determined that the partial third story addition would be compatible with other buildings on the alley and would not be visible from the front. Other properties in this alley are above the permitted alley lot height, such as the building at 1915 9½ Street and the Grimke School, which sits just across the alley from the subject properties. Finally, the Board concludes that this project will not adversely affect the public good at all. Indeed, it will be a benefit to the public good. The subject properties have been neglected for many years and will finally be put to public use. Finally, the lack of the three parking spaces will have no significant impact on parking in the area.

Harm to the Zone Plan

The dwellings are consistent with the residential uses permitted in an RF-1 zone and the relief requested is relatively minor. Accordingly, the Board concludes that the requested variances can be granted without harm to the zone plan.

The Special Exception Relief

As stated in Finding of Fact No. 20, Subtitle E § 5105 requires a five-foot side yard from any lot line abutting a non-alley lot. Because 1901 9½ Street and 1905 9½ Street are adjacent to non-alley lots but are not set back five feet from the adjacent lots, the additions require special exception relief pursuant to Subtitle E § 5108, as limited by Subtitle E § 5204.

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-X DCMR § 901.2.)

Granting relief from the side yard requirement will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps, and will not adversely affect the surrounding properties, as the relief will preserve the historic character of the row dwellings on this alley and will not have an adverse impact on the nearby T Street properties.

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Pursuant to Subtitle E § 5108, exceptions to the development standards of Subtitle E, Chapter 51, including the side yard requirements, are permitted by special exception, subject to the provisions and limitations of Subtitle E § 5204. The only limitation contained in Subtitle E § 5204 is that the provision specifically relates to a reduction in yards for alley lots in the RF zone. As this case involves a reduction of a side yard in an alley lot, this limitation has been met.

OP Report

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001)). Great weight means acknowledgement of the issues and concerns of the Office of Planning. In this case, OP was opposed to the requests for variance relief concerning height and the variance for expansion of nonconforming structures. In other respects, OP supported the proposed project.

The Board finds OP’s recommendations to be persuasive in certain respects, but not in others. With respect to the height variance and the variance for nonconforming structures, the Board does not find OP’s recommendation to be persuasive. OP raises three primary concerns: (1) The size of the alley lots are not exceptionally small; (2) The confluence of factors cited by the Applicant as constituting an exceptional condition do not result in a practical difficulty as to the need for height relief; and (3) The Applicant should have known that 9½ Street was an alley and did not do “due diligence.” Each of these issues will be addressed.

First, with respect to size, the Board finds that the subject properties are comparatively small and narrow with respect to other lots on the alley. (Findings of Fact 23 & 24.) Second, the small size of the properties, the unusual narrowing alley, the location of the properties on the narrow portion of the alley, the structural inefficiencies and deteriorated conditions of the existing historic buildings, and the HPRB third floor setback requirements, all relate to the practical difficulties in developing the project without height relief. All of these factors create a practical difficulty in developing marketable dwelling units. As explained in Findings of Fact 25 and 26, the existing buildings are in poor condition with numerous structural problems, making them costly to develop and making it unlikely that the Applicant will realize even a small profit. In fact, according to the documentation supplied by the Applicant, he is merely attempting to avoid a more sizeable loss. (Findings of Fact 30 and 31.) The small size of the lots makes it difficult to construct a third bedroom on only two stories, and without a third bedroom, the dwelling units would not be marketable. (Finding of Fact 29.)

With respect to the due diligence issue, what OP seems to suggest is that the Applicant’s difficulties were “self-created hardship” and should bar the granting of the variance. First, the Board has often stated that the self-created hardship rule does not apply to area variances, such as the height variance in this case. *See, Assoc. for Preservation of 17000 Block of N Street NW et. al. v. District of Columbia Bd. of Zoning Adjustment* (384 A.2d 674 (1978)). Second, the Board finds that before acquiring the properties the Applicant conducted sufficient due diligence regarding the properties. (Finding of Fact 9 and Exhibit 54.)

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Lastly, OP found that the variances would harm the zone plan because of the lack of exceptional conditions. The Board already has explained why it found OP's exceptionality analysis unpersuasive. Also, the Board has responded to OP's circular argument that the failure to prove exceptionality does not automatically prove harm to the zone plan. If the Board were to find no exceptional condition, then its discussion of harm to the zone plan would be rendered moot. Since OP did not furnish an independent basis for finding that the zone plan would be harmed, the Board finds OP's recommendation to deny on that basis unpersuasive.

ANC Report

The Board is also required to give "great weight" to issues and concerns raised by the affected ANC. (D.C. Official Code § 1-309.10(d).)

The first ANC report is only partially germane to this decision, as it was based on an earlier version of the proposed project that, among other things, requested a use variance. At that time, the Applicant had proposed a flat on each of the three alley lots, which required a use variance, rather than a one-family dwelling unit on each lot. The ANC stated in its report that the Applicant failed to show "economic hardship," presumably the "economic hardship" that might necessitate six dwelling units instead of three dwelling units, or the "economic hardship" that might necessitate alley dwellings that are above the maximum allowable height (Exhibit 48.) However, the use variance was withdrawn and is no longer relevant to the Board's consideration.

As to the height variance, which is relevant to the Board's consideration, the ANC applied the wrong legal standard in its analysis. The Applicant is not required to show "economic hardship" or any "hardship" at all. As explained previously, the standard in an area variance case, such as this request for a height variance, is one of "practical difficulty", not "undue hardship" and not "economic hardship". For reasons discussed previously, the Board found that the Applicant met the "practical difficulty" standard.

With respect to the ANC report dated November 11, 2016, the ANC recommended denial of the height variance for the new construction and denial of the variance for expansion of the two existing nonconforming structures. However, no specific "issues and concerns" are expressed in the ANC's final report. While the ANC delineated the relief it supported and the relief it opposed, it did not state with particularity the basis for its recommendations. Thus, there is nothing specific for the Board to give great weight to.

For the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby **ORDERED** that the application is **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 44.**

VOTE: 3-0-2 (Frederick L. Hill, Jeffrey L. Hinkle, and Michael G. Turnbull to APPROVE; Anita Butani D'Souza not participating; one Board seat vacant.)

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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: October 13, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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.

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

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PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

BZA APPLICATION NO. 19298
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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19578 of 944 Florida Avenue NW LLC, as amended,¹ pursuant to Subtitle X, Chapter 10, for a use variance from the use requirements of Subtitle U § 401, to operate a salon in the first and second floor of an existing building in the RA-2 Zone at premises 944 Florida Avenue N.W. (Square 357, Lot 50).

HEARING DATE: September 27, 2017
DECISION DATE: October 18, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 11.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 7, 2017, at which a quorum was present, the ANC voted 10-0-0 to support the application. (Exhibit 34.) ANC Commissioner Patrick Nelson testified in support of the application at the public hearing on September 27, 2017, emphasizing the ANC's support for the conversion of both floor of the structure to salon use. (BZA Hearing Transcript of September 27, 2017 ("Tr.") at 115-16.)

The Office of Planning ("OP") submitted a timely report recommending denial of the application. Specifically, OP indicated that the Applicant had not demonstrated that "there is an

¹ The original application requested a use variance to operate a salon on the first floor of the structure and indicated that the second floor would remain a residential use. The application was revised to eliminate the residential use and expand the use variance request to operate the salon use on the second floor as well. (Exhibits 30-32.) The caption has been revised accordingly.

exceptional condition that would result in a practical difficulty if the 2nd floor were not permitted to be converted from its long-time by-right residential use to the requested general services use for a hair salon.” (Exhibit 35.) OP also found that, while the Applicant demonstrated that the salon use on the first floor would cause no detriment to the public good, the removal of the second-floor residential unit could result in substantial detriment to the public good, in that the use variance would “result in the elimination of an existing, more-affordable dwelling unit.” (Exhibit 35.) During testimony at the September 27 public hearing, OP further explained that the concern stems from the extensive development of the neighborhood with luxury rental units, which creates upward pressure on rents in the area and makes the loss of non-luxury units substantially detrimental to the neighborhood. (Tr. at 109-10.)

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the application. (Exhibit 36.)

At the public hearing of September 27, 2017, David Riley testified in support of the application.

Use Variance

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for a use variance from the use requirements of Subtitle U § 401, to operate a salon in the first and second floor of an existing building in the RA-2 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

OP Report

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001)). Great weight means acknowledgement of the issues and concerns of the Office of Planning. In this case, OP recommended denial on the basis that the Applicant had not demonstrated: (1) that there is an exceptional circumstance causing an undue hardship of maintaining the second-floor residential use, and (2) that the removal of the existing, more affordable dwelling unit would not cause a substantial detriment to the public good. The Board was not persuaded by OP’s recommendation to deny the application on these grounds.

First, the Board found that the costs associated with improving the second-floor residential unit in order to make it a marketable rental unit would create an undue hardship for the Applicant. The Board relied on supplemental financial information filed to the record by the Applicant. (Exhibits 42-44.) To support this argument, the Applicant also cited information provided by the ANC that the existing second-floor residential unit has not been successfully used for that purpose for at least ten years. The Board also relied on prior case Application No. 18838 of 2737 Sherman Ave NW LLC and Gwendolyn Rucker, in which it granted a use variance to convert both floors of a vacant building most recently used for commercial purposes in the RF-1 zone

into a restaurant use. In that case, the Board found that the cost of renovating the second floor into a residential unit, as well as the difficulty in renting the residential unit, created an undue hardship to justify granting use variance relief. Similar to Application No. 18838, the Board finds that the property's unique history of use and the significant disrepair of the existing second floor residential unit would create an undue hardship for the Applicant if it were not granted a use variance to convert the second floor to salon use.

In addition, the Board finds that converting the second-floor residential unit into a commercial use would not cause a substantial detriment to the public good by removing a more affordable rental unit from the market. In contrast, as the ANC noted, the existing residential unit has not been consistently rented out for a period of about ten years. Therefore, the ability to operate a salon on the second floor would allow the Applicant to provide neighborhood-serving commercial services and make use of a previously unmarketable space. The Board further relies on the testimony of ANC 1B Commissioner Patrick Nelson, who pointed out that the ANC has been involved with the planning stages of nearby apartment developments and has ensured that those developments will have nearly 180 affordable units set aside at 30% area median income. (BZA Hearing Transcript of September 27, 2017 at 114.) This exceeds what is required by the Inclusionary Zoning regulations. The Board was persuaded by the ANC's argument that, especially in light of the affordable units being created near the property, the conversion of one residential unit to a commercial use would not create a substantial detriment to the public good.

ANC Report

The Board is also required to give "great weight" to issues and concerns raised by the affected ANC. (D.C. Official Code § 1-309.10(d).) In this case ANC 1B passed a resolution in support of the application and did not state any issues or concerns in opposition to the Board's approval of the application.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a use variance from 11 DCMR Subtitle U § 401, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and 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.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 32.**

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VOTE: 4-0-1 (Frederick L. Hill, Lesylleé M. White, Anthony J. Hood, and Carlton E. Hart (by absentee vote), to APPROVE; 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: October 30, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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.

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,

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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.

**BZA APPLICATION NO. 19578
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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19594 of 1469 Florida LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle F § 5201 from the rear yard requirements of Subtitle F § 305.1, to construct an eight-unit rear addition to an existing three-unit apartment house in the RA-2 Zone at premises 1469 Florida Avenue, N.W. (Square 2660, Lot 864).

HEARING DATE: October 11, 2017

DECISION DATE: October 25, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 5, 2017, at which a quorum was present, the ANC voted 11-0-0 to support the application. The ANC report alluded to permissions granted to the Applicant by the Single Member District Commissioner who is also the abutting neighbor to the west. (Exhibit 38.) At the hearing of October 11, 2017, the Single Member District ("SMD") Commissioner testified that the Applicant addressed the issues that he had regarding sight-lines and privacy, as well as concerns raised by neighbors related to the impact of construction, the closing in of green space, roof deck lighting, trash and bicycle storage, and noise control. In his testimony, the SMD expressed support for the application.

The Office of Planning ("OP") submitted a timely report dated September 29, 2017 recommending approval of the application with one condition. In its report, OP noted that the Applicant requested flexibility to make minor changes to the final design of the project in response to requests or instructions from the Historic Preservation Office and/or the Historic Preservation Review Board. OP indicated that they supported this condition, as long as those

changes do not result in the need for new or expanded relief that would require the Applicant to return to the Board. (Exhibit 35.)

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 34.)

The Historic Preservation Review Board provided concept approval for the project. (Exhibit 46B.)

Three letters in opposition were submitted into the record. (Exhibits 39-41.) One of the neighbors who submitted comments in opposition testified that after participating in the hearing, he was neither in support of nor opposition to the application. The Applicant testified about working with neighbors to reach an agreement to resolve their concerns, and submitted email messages from neighbors on the east side of the lot acknowledging that those concerns have been addressed. (Exhibit 46.)

At the conclusion of the Board’s hearing on October 11, 2017, the Board requested that the Applicant submit documents to complete the record and provide final plans to reflect the revisions. On October 18, 2017, the Applicant filed post-hearing documents to the Board providing the information requested. (Exhibits 46-46C.). At the decision meeting of October 25, 2017, the Board was satisfied that the Applicant had adequately addressed the neighbors’ concerns in this case and granted the requested approval.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle F § 5201 from the rear yard requirements of Subtitle F § 305.1. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle §§ 5201 and 305.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 46C – UPDATED PLANS AND WITH THE FOLLOWING CONDITION:**

1. The Applicant shall have flexibility to make minor changes to the final design of the project in response to requests or instructions from the Historic Preservation Office and/or Historic Preservation Review Board.

VOTE: 4-0-1 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Michael G. Turnbull (by absentee ballot) to APPROVE; 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: October 30, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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.

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PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITION 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. 19595 of Robert and Kim Segers, as amended¹, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201 from the maximum building area requirements of Subtitle D § 5006.1 and the pervious surface requirements of Subtitle D § 308.1, to construct an accessory two car garage in the R-1-B Zone at premises 1355 Monroe Street N.E. (Square 3963, Lot 22).

HEARING DATE: October 25, 2017²
DECISION DATE: October 25, 2017

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated July 20, 2017, from the Zoning Administrator, certifying the required relief. (Exhibit 8.)

The Board of Zoning Adjustment (“Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 5B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5B, which is automatically a party to this application. The ANC submitted a timely report recommending approval of the application. The ANC’s report and accompanying resolution indicated that at a regularly scheduled, properly noticed public meeting on September 27, 2017, at which a quorum was present, the ANC voted 5-0-0 to support the application. (Exhibit 29.)

The Office of Planning (“OP”) submitted a timely report, dated October 6, 2017, in support of the application, as amended, with one condition. (Exhibit 32.) The Applicant submitted a response to OP’s recommendations regarding mitigation of the loss of pervious surface and asked for clarification that only the expanded area of the driveway is proposed to be paved with pervious materials. (Exhibit 36.) OP submitted a supplemental report responding to the Applicant’s suggestion of including a trench drain feature and noted its support of the use of a trench drain feature. (Exhibit 37.)

¹ The Applicant amended the application by withdrawing the request for a variance for height pursuant to Subtitle D § 5002.1 from the original application that was based on the Zoning Administrator’s referral memo which indicated that height relief was needed. At the hearing on October 25, 2017, the Applicant confirmed that the plans had been revised such that the originally requested variance relief was no longer required. The Board accepted the amendment and the caption has been amended accordingly.

² The hearing was originally scheduled for October 18, 2017 and administratively postponed to October 25, 2017, when it was held.

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 31.)

Eighteen letters of support of the application were submitted to the record. (Exhibit 10.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under Subtitle D § 5201 from the maximum building area requirements of Subtitle D § 5006.1 and the pervious surface requirements of Subtitle D § 308.1, to construct an accessory two car garage in the R-1-B Zone. The only parties to the case were the Applicant and the ANC. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle D §§ 5201, 5006.1, and 308.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 12 AND WITH THE FOLLOWING CONDITION:**

1. The expanded area of the driveway, as shown on Exhibit 30, shall be covered by pervious material.

VOTE: **3-0-2** (Frederick L. Hill, Lesylleé M. White, and Carlton E. Hart, to APPROVE; no Zoning Commission member present and 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.

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FINAL DATE OF ORDER: October 27, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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 SUBTITLE A § 303, 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

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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.

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**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-07F**

Z.C. Case No. 11-07F

American University

(Modification of an Approved Condition of The American University Campus Plan)

December 12, 2016

Application of The American University (“AU” or “Applicant”), pursuant to § 3129 of the Zoning Regulations, requesting approval of modifications to Conditions of Z.C. Order No. 11-07. In accordance with § 3035.4 of the Zoning Regulations, this case was heard and decided by the D.C. Zoning Commission (“Commission”) using the rules of the D.C. Board of Zoning Adjustment at 11 DCMR §§ 3100 *et seq.* For the reasons stated below, the Commission hereby approves the modification application, subject to conditions.

HEARING DATE: July 14, 2016
DECISION DATE: December 12, 2016

FINDINGS OF FACT

Application, Parties, and Hearing

1. The Zoning Commission (“Commission”) approved the AU Campus Plan and East Campus Further Processing application pursuant to Z.C. Order No. 11-07. Z.C. Order No. 11-07 approved the American University Campus Plan for the period from 2011-2022 and approved a Further Processing application for the construction of six buildings on the East Campus. The East Campus is located across Nebraska Avenue, N.W. from the central campus, and is bounded by Nebraska Avenue, N.W., Massachusetts Avenue, N.W., a shared property line with the Westover Place Townhomes, and New Mexico Avenue, N.W. (Exhibit [“Ex.”] 1)
2. For the East Campus, the ZC approved the development of 590 residential beds in three buildings, three additional academic and administrative buildings, and 150 parking spaces and loading facilities in an underground garage, pursuant to the special exception standards of 11 DCMR § 210. (Ex. 1)
3. Condition No. 5 of Z.C. Order No. 11-07 states:

Until the start of the fall 2016 semester, the University shall maintain a supply of housing sufficient to make housing available for 85% of its full-time freshman and sophomore students and for 62% of all full-time undergraduates. All of the freshman and sophomore housing and 59% of the housing for full-time undergraduates shall be located entirely on campus. By the start of the fall 2016 Semester, the University shall maintain a supply of on campus housing sufficient to make housing available for 100% of its full-time freshman and sophomore students and for 67% of all full-time undergraduates. Nothing in this condition is intended to preclude the University from continuing to house undergraduate students who are not freshmen or sophomores off-campus after the fall

2016 semester begins; provided that the University maintains the minimum percentage of on-campus housing required.

4. On April 13, 2106, the Applicant filed an application to modify Condition No. 5 of Z.C. Order No. 11-07. Notice of the public hearing was published in the *D.C. Register* on May 6, 2016, and was mailed to Advisory Neighborhood Commission (“ANC”) 3D and ANC 3E and to the owners of all property within 200 feet of the Main and Tenley Campus. (Ex. 7, 8.)
5. The public hearing on this application was conducted on July 14, 2016. The hearing was conducted in accordance with the provisions of 11 DCMR § 3129.8, which notes that the scope of the hearing is limited to the impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision.
6. In addition to the Applicant, ANCs 3D and 3E were automatically parties in this proceeding. ANC 3D submitted a report and provided oral testimony in opposition to the application. ANC 3E did not participate in this application. (Ex. 19, 25.)
7. The Commission received timely party status requests from the Spring Valley Wesley Heights Citizens Association (SVWHCA) and Dr. Jessica Herzstein (the daughter of Robert Herzstein and the trustee of the trust that owns the property located at 4710 Woodway Lane, N.W.) in opposition to the application. At the public hearing, the Commission granted party status to SVWHCA as a party in opposition, but denied party status to Dr. Herzstein. However, Dr. Herzstein was permitted to testify as a person in opposition. (Ex. 14,16.)
8. At the July 14, 2016 public hearing, the University presented evidence and testimony from David Dower, Assistant Vice President for Planning and Project Management at American University; and Linda Argo, Assistant Vice President, External Relations and Auxiliary Services at American University. Mr. Dower and Ms. Argo answered questions from the ANC and the Party in opposition.
9. The Office of Planning (“OP”) filed a report in this case which was supportive of the application. (Ex. 18.)
10. The District Department of Transportation (“DDOT”) filed a report in this case which was supportive of the application. (Ex. 17.)

Proposed Modification Application

11. In the April 13, 2016 submission, the Applicant noted that despite its best efforts to complete construction of the East Campus buildings so that all 590 residential beds would be available for occupancy prior to the start of the fall 2016 semester, the University recognized that meeting this deadline will not be possible. The ability to provide housing for 67% of all full-time undergraduates was predicated on the opening of the 590 residential beds on the East Campus. Since the East Campus beds will not be available “by the start of the fall 2016 semester”, the Applicant requested that it be given

- one additional academic year, until the start of the fall 2017 semester, to meet the requirement that it make housing available for 100% of its full-time freshman and sophomore students and for 67% of all full-time undergraduates. (Ex. 1)
12. The Applicant noted that AU has a master lease with the management of the Berkshire apartment building, located at 4201 Massachusetts Avenue, N.W. in close walking distance to the Main Campus, in which 200 AU students are housed in this apartment building and are subject to AU residence hall regulations. In order to meet the demand for housing its undergraduate students for the 2016-2017 academic year, AU has extended and added apartments to this master lease with the Berkshire apartment building, so that AU will have 240 students in the Berkshire apartment building for the 2016-2017 academic year. All AU students who live in the Berkshire apartment building will continue to be subject to AU residence hall regulations. (Ex. 1.)
13. The Applicant's April 13, 2016 statement also noted that representatives of AU and the adjacent Wesley Theological Seminary of the United Methodist Church ("Wesley") began lease negotiations that would allow AU to utilize fifty-five existing dormitory beds on the Wesley Campus for use by AU undergraduate students.¹ The AU undergraduate students (who will be limited to juniors and seniors) would be housed in Straughn Hall. All AU undergraduate students living on the Wesley Campus would be subject to AU residence hall regulations. The Applicant noted that both AU and Wesley believed that locating the AU undergraduate students in the Straughn Hall building will minimize any potential adverse impact on any adjacent property owners. The AU students living in Straughn Hall will be able to access the AU Campus through an existing gate between the Wesley Campus and the AU Campus and will not need to walk along Massachusetts Avenue, N.W. to get to the AU Campus. (Ex. 1.)
14. AU also noted that it will continue to triple its students in existing residence halls on campus. For the 2016-2017 academic year, AU will utilize 330 triples in its existing on-campus residence halls. During the Campus Plan process, AU presented a chart to the Commission which depicted AU's expected undergraduate enrollment, the housing inventory that will be provided on campus, the housing that will be provided off-campus, and the percentages of student housing offered by AU to its undergraduate students. AU noted that in the Fall of 2015, it housed 58% of its undergraduate students on campus (rather than the required 59%) and that it provided housing to 61% of its undergraduate students (rather than the required 62%). These minor deviations were the result of an unprecedented number of students choosing to attend AU beginning in the Fall of 2014. In order to try and address this issue, AU reduced its admit rate from 46% in 2014, to 35% in 2015, and the admit rate for 2016 will be only 25.7%. Once the 590 beds on the East Campus are able to be occupied, AU will be able to achieve the 67% requirement that was established by the Commission in Z.C. Order No. 11-07. AU proposed that housing its undergraduate students in the Berkshire apartment building, on the Wesley

¹ AU recognized that locating undergraduate students on the Wesley campus will require a modification to the Wesley Campus Plan (Z.C. Order No. 05-40A). Wesley filed that modification application as ZC Case No. 05-40B.

Seminary Campus immediately adjacent to the AU Main Campus, and in triples on the AU Main Campus will minimize any potential adverse impacts on the adjacent community. (Ex. 1.)

15. On May 26, 2016, the Applicant submitted a proposed amendment to the modification application outlined in the April 13, 2016 submission. The Applicant's April 13, 2016, submission noted that AU and Wesley had begun lease negotiations to potentially allow AU to utilize fifty-five existing dormitory beds on the Wesley Campus for use by AU undergraduate students. In the May 26, 2016 submission, both AU and Wesley agreed to remove that request from their modification applications. No AU undergraduate students are proposed to be housed on the Wesley Campus. AU also stated that the continued use of the master lease beds at the Berkshire apartment building was discussed during the dialogue with the neighboring stakeholders. In general, it was agreed that the use of these master lease beds has been effective for AU and has not resulted in adverse impacts on neighboring properties. Therefore, AU proposed that it be allowed to continue to count these beds in the supply of on-campus housing that it provides for its undergraduate students for the remainder of this Campus Plan (until May 17, 2022). (Ex. 11)
16. On June 30, 2016, the Applicant submitted its final pre-hearing statement. In this filing the Applicant noted that since the May 26, 2016 submission to the Commission, AU had heard concerns about the proposal to count beds at the Berkshire apartment building in the supply of AU on-campus housing for the remainder of this Campus Plan. The Applicant stated that in order to simplify this modification application, AU was no longer seeking that approval. (Ex. 15)
17. At the public hearing, the Applicant and its representatives presented written and oral testimony and evidence into the record regarding the progress of construction on the East Campus, a summary of the housing provided by AU for the Fall of 2016, detailed information on the recent admittance rate of undergraduate students by AU, and a response to the issues raised in the ANC 3D resolution in this case. (July 14, 2016 Public Hearing Transcript ("Tr.") pp. 8-16; Ex. 23, 24.)

Office of Planning and Department of Transportation

18. By report dated July 5, 2016, and by testimony at the public hearing, OP concluded that it did not object to the proposed modification of Condition No. 5 of the order. OP noted that the requested modification of Condition No. 5 would essentially extend the time limit for completion of the East Campus undergraduate housing, and adjust the targets for the supply of undergraduate housing accordingly. OP also encouraged AU to continue to work with the community and ANC constructively and openly, to address concerns prior to the public hearing. (Ex. 18.)
19. By report dated July 5, 2016, DDOT concluded that the application will have no adverse impacts on the travel conditions of the District's transportation network as the pedestrian trips generated by the East Campus were included as part of ZC 11-07 and no additional trips are expected to be generated by the proposed modification. (Ex. 17.)

ANC 3D

20. ANC 3D submitted a letter, dated July 7, 2016, to the record which noted that at its regularly scheduled meeting on July 7, 2016 at the Sibley Memorial Hospital Medical Office Building, with a quorum present at all times, ANC 3D voted 7-1 to approve a resolution supporting the AU modification, as proposed, with conditions. Several concerns were raised by residents about AU's failure to control the growth of its undergraduate student population; the operations of the Community Liaison Committee (CLC); and the sequence for completion of the East Campus buffer buildings. Residents expressed concerns at the meeting that AU had not offered an explanation for its 10% increase in the undergraduate student enrollment other than the acceptance rate over the first five years of the current Campus Plan did not fit the University's existing models. Nevertheless, ANC 3D believed that the construction delays warranted support for the modification, but with conditions that would require AU to: Continue to work with neighbors to solve concerns about compliance issues related to Jacobs Field, parking, and the Community Liaison Committee and set a deadline for resolving those issues of no later than December 15, 2016, and if those issues are not resolved by that date, AU agrees to invoke the mediation provisions outlined in Z.C. Order No. 11-07; Submit a parking utilization report to DDOT, as required by ZC 11-07, by September 1, 2016 and to file annual reports as required throughout the life of the 2011 Campus Plan and provide copies of these annual reports to ANC 3D; and Honor the requirement in Z.C. Order No. 11-07 that the construction of the "buffer buildings" be sequenced so that those buildings will be completed no later than the opening of the student housing buildings on the East Campus, especially given that – no matter the concessions already made by residents on work hours – AU will not be able to meet its Fall 2016 target for occupying these new residence halls. ANC 3D is so concerned about AU's undergraduate student growth that it also recommends that the Commission convene an additional hearing focusing on enrollment for the purpose of requiring the University to show cause why a cap should not now be imposed on AU's full-time undergraduate student population for the remainder of the term of the AU Campus Plan and assess whether AU's growth has created objectionable conditions for residents. (Ex. 19.)
21. At the public hearing, the Chairman of ANC 3D, Thomas M. Smith, presented testimony on behalf of the ANC. Mr. Smith provided testimony regarding the 10% undergraduate enrollment increase that has occurred since approval of the 2011 – 2020 Campus Plan, AU's failure to meet its housing requirements in the past, and that the 67% housing requirement in Condition No. 5 has not served as a cap on undergraduate enrollment. Mr. Smith stated that this uncontrolled growth in undergraduate enrollment is creating traffic, parking, and other pressures on the community, including a greater use of AU's fields. Mr. Smith also noted that the CLC has not been effective in addressing these conflicts. Mr. Smith also noted problems with AU's proposed sequencing of the construction of the buffer buildings on the East Campus and the Applicant's failure to seek a modification of Condition No. 38. In conclusion, Mr. Smith noted that ANC 3D supports the language proposed by AU to modify Condition No. 5, but also encouraged additional steps by the Commission to encourage AU to reach a resolution with residents on compliance issues and to address the spike in undergraduate student enrollment. (Ex. 25; Tr. pp. 41-51.)

Parties in Opposition

22. Dr. Jeffrey L. Kraskin, President of SVWHCA, presented testimony at the public hearing in this case. Dr. Kraskin discussed SVWHCA's concerns about the undergraduate enrollment increases that have occurred since approval of the 2011 Campus Plan and AU's continued use of triples on-campus to meet its housing requirement. Dr. Kraskin raised concerns about the operation and effectiveness of the CLC. Dr. Kraskin also testified on the lack of consequences, integrity, and responsibility on AU's part in regard to compliance with the requirements of the 2011 Campus Plan Order. (Tr. at pp. 63-68.)

Additional Testimony and Letters in the Record

23. Dr. Jessica Herzstein presented written and oral testimony regarding the adverse impacts that the use of the Jacobs Field has on her property. Dr. Herzstein testified that the issues related to Condition Nos. 17-25 of the 2011 Campus Plan Order have not been resolved as the noise from Jacobs Field remains a serious nuisance and concern. Dr. Herzstein stated that AU is not in compliance with the letter or spirit of these conditions. Dr. Herzstein also testified that the increases in the number of undergraduate students creates pressures on campus facilities, like Jacobs Field and there has been a huge increase in the number of events on Jacobs Field and the timing and number of the events are causing and will cause greater disruption for her and her neighbors. (Ex. 16, Tr. pp. 68-72.)
24. Benjamin Tessler presented written and oral testimony at the public hearing in opposition to the application. Mr. Tessler noted that he was speaking on behalf of other Westover owners. Mr. Tessler stated that he is in support of the ANC 3D's resolution and expressed concerns regarding whether AU is doing enough to monitor student growth. Mr. Tessler also stated that he believed the all of the buildings on the East Campus were to be completed prior to any occupancy of the East Campus. (Ex. 26, Tr. pp. 72-74.)
25. The Westover Place Homes Corporation ("WPHC") submitted a letter in support of the application. WPHC noted that the long expressed views of their residents is that the East Campus project should be completed as soon as possible in order to end the noise, dirt, traffic, and inconvenience that has become part of their daily lives. WPHC determined that the proposed modification appears to have no direct effect on their residents and WPHC does not oppose the proposed modification. (Ex. 20.)
26. Rebecca Weir, who lives at 4227 46th Street, N.W., submitted a letter to the record which expressed concern regarding pedestrian and vehicular traffic issues at Ward Circle. Ms. Weir requested that the Zoning Commission require AU to immediately install traffic/pedestrian signals on Massachusetts Avenue at Ward Circle. (Ex. 21.)

Post-Hearing Submissions

27. At the conclusion of the public hearing, the Commission requested that the Applicant provide information on three issues in a post-hearing submission which was to be filed

- with the Commission on September 12, 2016. Those issues were related to: (i) American University's undergraduate enrollment; (ii) the effectiveness of the CLC; and (iii) the sequencing of the construction of the "buffer buildings" on the East Campus and the ability to occupy the residential buildings on the East Campus. The Commission also strongly encouraged American University to address the concerns raised by ANC 3D and the SVWHCA, regarding the University's satisfaction of the requirements of the 2011 Campus Plan, through continued dialogue.
28. On September 12, 2016, the Applicant filed a request for additional time to work with representatives of ANC 3D and SVWHCA to continue dialogue regarding the issues that were raised at the July 14, 2016 public hearing. The Applicant requested that it be allowed to submit its post-hearing submission on October 26, 2016 and the parties would be allowed to submit their responses on November 7, 2016. ANC 3D and SVWHCA agreed to this request. The Commission granted this request. (Ex. 31.)
 29. On October 26, 2016, the Applicant, ANC 3D and SVWHCA filed a joint request seeking additional time for the submission of the Applicant's post-hearing submission and the response of the Parties. The Applicant, ANC 3D and SCWHCA noted that they were holding fruitful discussions and that they believed they were close to reaching an agreement that would address the issues raised at the July 14, 2016 public hearing. It was requested that the Applicant submit its post-hearing submission on November 16, 2016 and the Parties could submit their responses on December 8, 2016. The Commission agreed to this request. (Ex. 32.)
 30. On November 16, 2016, the Applicant submitted its post-hearing materials which addressed the issues noted in the public hearing regarding AU's undergraduate enrollment and housing requirement and the effectiveness of the CLC. The post-hearing submission provided revised language for Condition No. 38 of the Campus Plan Order addressing the sequencing of the construction of the "buffer buildings" on the East Campus and the ability to occupy the residential buildings on the East Campus. In addition, the post-hearing submission provided information regarding the Applicant's satisfaction of the Conditions of Z.C. Order No. 11-07 (the "Campus Plan Order") regarding the Applicant's use of Jacobs Field. The Applicant noted that after the public hearing, the Applicant and representatives of SVWHCA and ANC 3D spent dozens of hours meeting to discuss the issues raised at the public hearing in this case and in preparing and circulating drafts of an agreement between the parties which adequately address the relevant issues before the Commission. The Applicant, SVWHCA, and ANC 3D (the "Signatory Parties") entered into an agreement related to the University's undergraduate enrollment and housing requirements, and the operations of the CLC. The submission therefore provided proposed revised language for Condition No. 5 regarding American University's housing requirements and Condition No. 16 of the Order addressing the composition and effectiveness of the CLC and the creation of a Neighborhood Collaborative, as follows: (Ex. 33)

a. Undergraduate Enrollment and Housing Requirement

The Applicant noted that in 2011, when the Commission was reviewing American University's student enrollment projections for the period from 2011 – 2021, American University anticipated minimal growth in the undergraduate population and robust growth in both graduate and law programs. However, American University has not seen the projected increases in graduate programs, and, in some cases has experienced significant declines. While not unique to AU, the forecasted demand for a number of specific programs of study did not materialize. In order to maintain AU's financial stability, AU has had to increase the undergraduate enrollment to account for the decreases in graduate and law programs.

Based on the shared goals of the Signatory Parties to help assure that American University's use of its campus does not create objectionable impacts on neighboring properties and American University is able to respond to and manage the demands of the higher education marketplace, the Signatory Parties agreed to the following:

- American University will be able to continue to count up to 200 off-campus master-leased beds (such as the Berkshire apartments) towards the number of beds that it is required to make available to undergraduate students for the remainder of the 2011 Campus Plan;
- American University will be able to continue to use up to 330 on-campus triples in the calculation of the number of beds that it is required to make available to undergraduate students for the remainder of the 2011 Campus Plan;
- American University will not pursue a Further Processing application for development of the South Hall residential building during the remainder of the 2011 Campus Plan;
- The University, through the proposed Neighborhood Collaborative, would discuss and explore sites for possible future housing development prior to the next campus plan, and/or before submitting any amendment for additional housing to the existing 2011 Campus Plan;
- The University, through the Neighborhood Collaborative, would monitor and address any objectionable impacts attributable to student enrollment, staff, and/or faculty; and
- The Signatory Parties recognize that there may be a need to discuss the issue of an undergraduate enrollment cap further. Nothing in the Agreement precludes the Signatory Parties from advocating for or opposing such a cap in the future; (Ex. 33)

b. Proposed Modifications to Conditions No. 5 and 16 Regarding Enhancements to the CLC

The Applicant stated that the Signatory Parties believe it is necessary to undertake a re-working of the CLC, as it was constituted under the 2011 Campus Plan. The intent of the proposed modifications is to provide for a more functional, responsive and consensus-based approach to enable AU to resolve issues of concern that impact the community. The Signatory Parties also agreed that the operations of the CLC would be enhanced if it were co-led by a representative of American University and a representative of the neighboring community organizations. The Signatory Parties made several agreements regarding the CLC's co-leadership and composition, and proposed a new Neighborhood Collaborative group: (Ex. 33)

- The CLC should be co-led by a representative of American University and a representative from one of the following community association organizations: Spring Valley and Wesley Heights Citizens Association, Neighbors for a Livable Community, Fort Gaines Citizens Association, Westover Place Homes Corporation, Tenley Campus Neighbors Association, and Tenley Neighbors Association. The co-leaders will work together to create mutually acceptable agendas before each meeting of the CLC, and will alternate as to which co-leader will be responsible for leading each of the quarterly CLC meetings; and
- The Neighborhood Collaborative should be composed of representatives of Spring Valley and Wesley Heights Citizens Association, Neighbors for a Livable Community, Fort Gaines Citizens Association, Tenley Neighbors Association, Tenley Campus Neighbors Association, and Westover Place Homes Corporation. Representatives of ANC 3D and ANC 3E who represent neighborhoods immediately adjacent to the main campus also will be invited to participate. The Neighborhood Collaborative will be expected to address at a minimum the issues that directly impact neighbors immediately adjacent to the main campus related to enrollment, student housing, facilities planning, parking, transportation and student conduct. The Neighborhood Collaborative will be organized and led by a representative of American University; (Ex. 33)

c. Modification to Condition No. 38 and Clarification of Finding of Fact No. 133

At the public hearing, representatives of the Applicant stated that the exterior of the buffer buildings will be completed prior to the occupation of any of the student housing buildings on the East Campus. This means that all windows and doors for the buffer buildings will be installed and only interior fit out and construction will need to occur in these building prior to their use and occupancy. However, the interior of the buffer buildings will not be complete. The Applicant believes that providing this level of completion of these buildings is consistent with the intent of the buffer buildings to act as a visual and acoustical barrier between the student housing buildings on the East Campus and the adjacent Westover townhomes. The

Applicant proposed revised language to be included in Condition No. 38 in order to allow the occupancy and utilization of the 590 beds on the East Campus for undergraduate students before the interior fit out and construction of the buffer buildings is complete; and (Ex. 33)

d. Satisfaction of Conditions Regarding the Use of Jacobs Field

The Applicant addressed its satisfaction of the Conditions of Z.C. Order No. 11-07 that addressed the use of Jacobs Field. The Applicant noted that Condition No. 24 of the Campus Plan Order required the Applicant to “implement measures to limit the noise impacts of activity on Jacobs Field on neighboring properties”. Since the issuance of the Campus Plan Order on May 12, 2012, representatives of the Applicant have consistently engaged with Robert Herzstein and representatives of his estate, and other neighboring property owners to provide the required information regarding the Applicant’s use of Jacobs Field and to discuss the measures that the Applicant has undertaken to limit the noise impacts from the use of Jacobs Field.

Representatives of the Applicant and Miller, Beam and Paganelli (“Miller Beam”, the Applicant’s acoustical engineering firm) met with Mr. Herzstein on June 19, 2012 at Jacobs Field and Mr. Herzstein’s property to address sound management issues. After that meeting, Miller Beam undertook further studies of the noise impacts of the use of Jacobs Field and proposed a series of modifications to the sound system that was previously used by the Applicant. The sound system modifications included the purchase of new speakers, placement of speakers on ground level, the additional of a microphone attachment that prevents noise “spikes,” and the removal of the scoreboard horn.

The Applicant stated that subsequent to Mr. Herzstein’s passing, American University representatives were contacted by Dr. Jessica Herzstein who identified herself as the daughter of Mr. Herzstein and the executor of his estate. Thereafter, representatives of American University held meetings with Dr. Herzstein and her husband (Elliot Gerson) on May 13, 2015; June 7, 2015; July 23, 2015; August 20, 2015, June 7, 2016 and June 15, 2016. In those meetings the parties discussed the use of Jacobs Field and possible additional measures that could be taken to lessen the noise impacts of the use of Jacobs Field. American University representatives provided Dr. Herzstein and Mr. Gerson with the Jacobs Field calendar and contact information for appropriate University personnel should they encounter any issues. Included in several of these meetings were representatives of Advisory Neighborhood Commission 3D and Neighbors for a Livable Community. Additionally, neighbors were advised to contact the University should there be a date on which they have planned an event at their residence that could be impacted by activity on the field. Representatives of American University continue to engage in dialogue with Dr. Herzstein and Mr. Gerson regarding the use of Jacobs Field and held meetings with Dr. Herzstein and Mr. Gerson on September 2, 2016 and September 9, 2016. The Applicant has offered and expects that it will be having an additional meeting with Dr. Herzstein and Mr. Gerson prior to the upcoming Holidays. The Applicant

provided additional statements and information as to how it satisfied the remaining Conditions of ZC Order No. 11-07 (Conditions No. 18-25) which address the use of Jacobs Field. (Ex. 33)

31. ANC 3D submitted a response to the Applicant's post-hearing submission and noted that at its regularly scheduled meeting on December 7, 2016, with a quorum (5) present at all times, ANC 3D voted 7-0 to endorse the revised Agreement regarding changes to improve the effectiveness of the CLC, including the establishment of a Neighborhood Collaborative, which was included in the filing. (Ex. 39) The ANC expressed hope that the Agreement would set the stage for continuing dialogue between AU and the ANC.
32. SVWHCA submitted a response to the Applicant's post-hearing submission and noted that a new agreement with AU had been signed on December 8, 2016, which required AU to initiate dialogue within the CLC to address various issues; it also required the creation of a Neighborhood Collaborative. (Ex. 38)
33. Ward 3 Vision submitted a response to the Applicant's post-hearing submission and noted that the proposed modification to Condition No. 16 "drastically modifies" the CLC and requesting that the Commission reject the proposed modifications to that condition. (Ex. 37A)

CONCLUSIONS OF LAW

The Applicant requested that the Zoning Commission approve an application to modify approved conditions of the Zoning Commission's approval of the American University Campus Plan, pursuant to 11 DCMR § 3129 et seq. Based upon the record in this case, the Commission concludes that the University has satisfied the filing and notice requirements of 11 DCMR §§ 3129 et seq. The parties to the original application were served a copy of the modification application. ANC 3D and SVWHCA acted as parties in this application.

The Commission concludes that the Applicant has satisfied the burden of proof that the impact of the modifications on the subject of the original application, the proposed modifications of Condition Nos. 5 and 38, would not cause the university use to become objectionable. However, in light of Ward 3 Vision's objections to the modification of Condition No. 16, the Commission concludes that all members of the CLC should be able to offer input as to the proposed changes in a future further processing request from the Applicant that is distinct from this application that would allow for greater public input. A related sentence in Condition No. 5 is also excluded from this approval.

In regard to the proposed changes to Condition No. 5, the Commission recognizes that the delayed opening of the East Campus buildings prevented the Applicant from being able to provide housing for 67% of all full-time undergraduates by the start of the Fall 2016 semester. Therefore, the Commission believes that it is appropriate to allow the Applicant one additional academic year, until the start of the Fall 2017 semester, to meet the requirement that it make housing available for 100% of its full-time freshman and sophomore students and for 67% of all

full-time undergraduates. Based on the information provided in the record, ANC 3D and the Parties in Opposition did not object to this request.

In regard to the issues raised about AU's increased undergraduate enrollment, the Commission notes the information provided by the Applicant that American University is highly tuition dependent and in order to maintain financial stability it must manage its enrollment accordingly. The Commission recognizes that the Signatory Parties agreed to certain additional conditions with regard to AU's undergraduate enrollment and the housing that AU makes available to its undergraduate students. The Commission notes that the Signatory Parties have agreed to the concept that the University will be able to continue to count as "on campus" housing all beds that are in a building which is subject to a master lease with American University (and subject to AU Residence Hall Regulations) for the remainder of this Campus Plan (2022). The Signatory Parties also agreed to the concept of AU continuing to use up to 330 triples on campus in the calculation of the satisfaction of the University's housing requirement for the remainder of this Campus Plan (2022). The Commission also acknowledges that the University will no longer move forward with a Further Processing application for the South Hall during this Campus Plan and will explore the use of a Neighborhood Collaborative as mechanism to discuss and explore sites for future housing development on AU's campus. The Commission accepts these elements of the agreement between these Signatory Parties and finds it appropriate to include them in the proposed revisions to Condition No. 5 of Z.C. Case No. 11-07.

In regard to the changes to the CLC and the proposed creation of the Neighborhood Collaborative, as proposed by the Signatory Parties and outlined in the proposed revisions to Condition No. 16 of Z.C. Order No. 11-07 (as well as the proposed revisions to Conditions No. 5), while the Commission applauds the parties for coming together to create a process that will help strengthen the CLC and create a better process for enhancing dialogue between the University and relevant community stakeholders, the Commission recognizes that changes to the CLC may affect people for whom this proceeding did not provide adequate notice of the changes. The Commission believes that proposed modifications will provide for a more functional, responsive, and consensus based approach to enable AU to resolve issues of concern that impact the community when the entire community has had the ability to offer input on the changes in a public forum. Conversely, because the other newly requested modifications involve housing rather than changes to the CLC, they flow from the original Public Hearing Notice and modification is appropriate as a part of this action.

In regard to the issue related to the sequencing of the construction of the buildings on the East Campus and the ability of American University to occupy the 590 beds on East Campus for undergraduate students, the Commission finds that the Applicant's proposed completion of the exterior construction of the buffer buildings is sufficient to address the intent and purpose of the buffer buildings. The Applicant has noted that all exterior construction of the buffer buildings will be complete (all windows and doors have been installed) prior to the occupancy of the residential beds on the East Campus. The only work that will need to occur in the future for these buffer buildings is interior fit-out and construction. The Zoning Commission agrees with the Applicant's statement that providing this level of completion of these buildings is consistent with the intent of the buffer buildings to act as a visual and acoustical barrier between the student

housing buildings on the East Campus and the adjacent Westover townhomes. The proposed modifications of Condition No. 38 of ZC Order 11-07 appropriately address this issue.

The Commission also acknowledges the information that was provided into the record from ANC 3D, SVWHCA, Dr. Herzstein, and the Applicant regarding the use of Jacobs Field. The Commission encourages the parties and community members to continue the dialogue that has occurred to date and if such dialogue does not result in a resolution of the concerns raised by Dr. Herzstein or other adjacent property owners, the parties should avail themselves of the mediation process as described in ANC 3D's Resolution submitted to the record in this case (as detailed in Condition No. 24a of Z.C. Order No. 11-07).

The Commission accorded the written recommendation of OP the "great weight" to which it is entitled pursuant to D.C. Official Code § 6-623.04 (2001). The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.

The Commission is required to give great weight to the issues and concerns raised by ANC 3D pursuant to D.C. Official Code § 1-309.10(d) (2001)(2012 Repl). In this instance, ANC 3D supported the modifications subject to adding conditions addressing issues and concerns not directly related to the modifications requested. The Commission is pleased that the parties have been able to reach agreement on how to resolve these issues, particularly as it relates to the CLC, and regrets that it cannot include the suggested revised conditions in this order. Further, the Commission encourages the Applicant to use a future further processing application to give effect to the settlement agreement reached.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3129 and it is therefore **ORDERED** that American University's proposed modification to the approved Condition Nos. 5, 16, and 38 of Z.C. Order No. 11-07 be **GRANTED**. The Conditions in Z.C. Order Nos. 11-07, 11-07C, and 11-07D remain unchanged except as follows (additions are in **bold** and underlined; deletions are in ~~strikethrough~~ text):

1. Condition No. 5 is amended to read as follows:

- 5.a.** Until the start of the fall ~~2016~~**2017** semester, the University shall maintain a supply of housing sufficient to make housing available for 85% of its full-time freshman and sophomore students and for 61% of all full-time undergraduates. All of the freshman and sophomore housing and 58% of the housing for full-time undergraduates shall be located entirely on campus. By the start of the fall ~~2016~~**2017** semester, the University shall maintain a supply of on campus housing sufficient to make housing available for 100% of its full-time freshman and sophomore students and for 67% of all full-time undergraduates. **Housing provided by the University through a master lease (such as the Berkshire**

apartments), and that is subject to AU residence hall regulations, may be considered to be “on campus” housing for the purpose of calculating the housing percentages noted above through the end of this Campus Plan (2022). American University will be able to continue to use on-campus triples (up to 330) in the calculation of the number of beds that it is required to make available to undergraduate students for the remainder of the 2011 Campus Plan. Nothing in this condition is intended to preclude the University from continuing to house undergraduate students who are not freshmen or sophomores in off-campus housing after the fall–~~2016~~2017 semester begins; provided that the University maintains the minimum percentage of on-campus housing required.

5.b. American University will not pursue a Further Processing application for development of the South Hall residential building during the remainder of the 2011 Campus Plan. The University will meet with the community to discuss and explore sites for possible future housing development prior to the next campus plan, and/or before submitting any amendment for additional housing to the existing 2011 Campus Plan. The University will monitor and address any objectionable impacts attributable to student enrollment, staff, and/or faculty.

2. Condition No. 38 is amended to read as follows:

38. Buildings 1 through 6 shall be sited as shown in Exhibits 589 and 602 of the record. The East Campus shall contain a maximum of 590 beds for undergraduate students, and a maximum of 3,000 square feet (located in Building 1) devoted to retail use. **The Applicant will be able to utilize the 590 beds for undergraduate students after the exterior construction of the buffer buildings is complete (all windows and doors have been installed and only interior fit out and construction will need to occur in these buildings prior to their use and occupancy).**

On December 12, 2016, upon motion by Commissioner May, as seconded by Vice Chairman Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull to approve; Peter A. Shapiro, not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9 this Order shall become final and effective upon publication in the *D.C. Register* on November 10, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-24
Z.C. Case No. 16-24
1336 8th Street SPE, LLC and the District of Columbia
(Consolidated PUD and Related Map Amendment
@ Square 399, Lot 68)
July 10, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on May 25, 2017, to consider an application for a consolidated planned unit development (“PUD”) and a related zoning map amendment filed by 1336 8th Street SPE, LLC on behalf of the District of Columbia (“District”) (collectively, the “Applicant”). The Commission considered the application pursuant to Subtitle X, Chapter 3 and Subtitle Z of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 400. For the reasons stated below, the Commission hereby **APPROVES** the application.

FINDINGS OF FACT

The Application, Parties, Hearings, and Post-Hearing Filings

1. On November 7, 2016, the Applicant filed an application with the Commission for consolidated review of a PUD and a related Zoning Map amendment from the MU-4 zone to the MU-6 zone for the parcel located at 1336 8th Street, N.W., and more particularly described as Square 399, Lot 68 (“Property”). The Property is presently improved with a surface parking lot that is used by members and employees of the Immaculate Conception Catholic Church (“Church”) located at 8th and N Streets, N.W.
2. The Applicant proposes to redevelop the Property with a mixed-use project with residential use, generating approximately 85 residential units, and non-residential uses, comprised of street-level retail uses, and approximately 1,500 square feet of space for use by the Church (“Project”). The Project will have a maximum density of up to 7.2 floor area ratio (“FAR”) and a maximum building height of 98 feet.
3. The Project also includes 23 below-grade parking spaces. Vehicular access to the garage and to the associated loading facilities will be from the public alley immediately west of the Property.
4. The Project has been reviewed and conceptually approved by the Historic Preservation Review Board (“HPRB”).
5. Development of the Property is subject to the Land Disposition and Development Agreement (“LDDA”) between 1336 8th Street SPE, LLC, dated February 22, 2016, and the District, dated February 22, 2016, which requires the PUD to set aside 30% of the total residential units as affordable, for the life of the Project. Therefore, the PUD is

potentially exempt from Inclusionary Zoning (“IZ”) requirements of 11-C DCMR, Chapter 10 if approved by the Zoning Administrator and subject to other requirements to be discussed later. Half of the affordable units will be reserved for households earning up to 50% of the area median income (“AMI”) and half of the affordable units will be reserved for households earning up to 80% of AMI. In accordance with the LDDA, all of the affordable units will be in the multifamily component of the Project.

6. The Applicant requests flexibility from the following requirements of the Zoning Regulations: (i) to have a rear yard of six feet in lieu of the 15 feet that is required pursuant to 11-G DCMR § 405.2; (ii) to have an open court (open court 4) that is five feet in width, where a minimum open court width of 26.3 feet is required, and to have an open court (open court 1) that is one foot in width, where a minimum open court width of 10 feet is required under 11-G DCMR § 202.1; (iii) to provide a 30-foot loading berth and a 100-square-foot loading platform in lieu of a 30-foot loading berth, 100-square-foot loading platform, and one service delivery space as required under 11-C DCMR § 901.1; (iv) to have a building with a maximum lot occupancy of 100% at the lowest residential level, which is the street level of the Project, where a lot occupancy of 80% is permitted under 11-G DCMR § 404.1; and (v) to have all of the affordable units within the multifamily section of the PUD and none in the ground-level units along 8th Street, as provided in the LDDA.
7. By report dated February 3, 2017, (Exhibit [“Ex.”] 13), the District of Columbia Office of Planning (“OP”) recommended that the application be set down for a public hearing. At its public meeting on February 13, 2017, the Commission voted to schedule a public hearing on the application.
8. The Applicant filed its prehearing submission on March 6, 2017, which included a letter of support from the Deputy Mayor for Planning and Economic Development (“DMPED”) and a public hearing was timely scheduled for the matter. (Ex. 15-16I.) On April 5, 2017, the notice of public hearing was sent to all owners of property located within 200 feet of the Property; Advisory Neighborhood Commission (“ANC”) 6E, the ANC in which the Property is located, and ANC 2F, which is located within 200 feet of the Property; Commissioner Frank Wiggins, the Single Member District Representative for ANC 6E-03; and to Councilmember Charles Allen, whose Ward includes the Property. A description of the proposed development and the notice of the public hearing in this matter were published in the *DC Register* on April 14, 2017.
9. On April 25, 2017, the Applicant filed its Transportation Impact Study. (Ex. 24-24A.) On May 5, 2017, the Applicant filed its supplemental prehearing submission. (Ex. 26-26A11.) The supplemental prehearing submission included: (a) revised architectural plans and elevations; (b) responses to outstanding issues from the setdown of the application; (c) responses to interagency review comments; (iii) revised and restated areas of PUD flexibility; (d) a restatement of the public benefits and project amenities; and (e) a statement regarding the Applicant’s community outreach.

10. On May 15, 2017, OP submitted a hearing report. (Ex. 27.) The OP hearing report stated that the “proposal is not inconsistent with the Comprehensive Plan” and recommended approval of the application, including the flexibility requested. (Ex. 27, p. 1.)
11. On May 15, 2017, DDOT submitted a hearing report. (Ex. 28.) The DDOT hearing report indicated no objection to the application subject to the conditions set forth in Finding of Fact (“FF”) No. 76 of this Order.
12. ANC 6E submitted a resolution in support of the Project, indicating that at its regularly scheduled and duly noticed public meeting of March 7, 2017, at which a quorum of commissioners was present, it voted 5-0-2 to support the application. (Ex. 19.) The resolution stated that ANC 6E supports the application including the Applicant’s requests for flexibility from the Zoning Regulations and the PUD benefits and amenities proffered by the Applicant.
13. The parties to the case were the Applicant and ANC 6E.
14. On May 25, 2017, DC for Reasonable Development and OneDC submitted a letter in opposition to the Project. (Ex. 33). Neither DC for Reasonable Development nor OneDC sought party status, and neither organization testified at the public hearing.
15. The Commission convened a public hearing on the application May 25, 2017. At the public hearing, the Applicant presented seven witnesses: Richard Lake and Buwa Binitie, on behalf of the Applicant; Robert Sponseller and Joseph Bailey of Shalom Baranes Associates, architects for the Project; Dan VanPelt, of Gorove/Slade transportation consultant for the Project; Lisa Siri of Siri, LLC, landscape architect for the Project; and Shane Dettman of Holland & Knight LLP. Based upon their professional experience and qualifications, the Commission qualified Mr. Sponseller and Mr. Bailey as experts in architecture; Mr. VanPelt as an expert in transportation planning and engineering; Ms. Siri as an expert in landscape design; and Mr. Dettman as an expert in planning, land use, and zoning.
16. Karen Thomas of OP, Evelyn Israel of DDOT, and Commissioner Alex Padro, ANC 6E’s Chair and the Single Member District Representative for the Property, testified in support of the application at the public hearing.
17. At the conclusion of the public hearing, the Commission closed the record and took proposed action to approve the application. The proposed action was referred to NCPC on May 25, 2017, pursuant to § 492 of the Home Rule Act. (Ex. 35.)
18. On June 1, 2017, the Applicant submitted a response to the letter in opposition to the Project pursuant to 11-Z DCMR § 602.3, which provides all parties to a case an opportunity to file written responses to any exhibit, information, or legal briefs within seven days after the close of the public hearing. (Ex. 37.)

19. On June 16, 2017, the Applicant submitted its proposed list of proffers and corresponding conditions pursuant to 11-X DCMR § 308.8, *et seq.* and its proposed findings of fact and conclusions of law. (Ex. 38, 39.)
20. On June 23, 2017, the Applicant requested a postponement of the Commission's consideration of final action to allow it to submit a final proffers and draft conditions chart pursuant to 11-X DCMR § 308.12, and to give the parties a chance to respond pursuant to 11-X DCMR § 308.13. (Ex. 40.)
21. On June 30, 2017, the Applicant submitted its final proffers and draft conditions chart pursuant to 11-X DCMR § 308.12. (Ex. 41.)
22. The Commission took final action to approve the PUD on July 10, 2017.
23. As of that date, no report from the NCPC had been received.

The Property and Surrounding Area

24. The Property is located at the southwest corner of the intersection of 8th and O Street, N.W., within the boundaries of ANC/SMD 6E-03. It has a land area of approximately 13,306 square feet and is a rectangular lot with approximately 141 linear feet of frontage on 8th Street, N.W., approximately 94.33 linear feet of frontage on O Street, N.W., and approximately 141 linear feet of frontage on a public alley along the west side of Property. The Property is currently improved with a surface parking lot that is used by members and employees of the Church.
25. Surrounding uses include a mix of residential, retail, service, and hotel uses. The O Street Market, which was developed pursuant to Z.C. Order No. 07-26, is located across O Street to the north of the Property.
26. The Property is also located within the Shaw Historic District.
27. The Applicant requested a Zoning Map amendment to rezone the Property from the MU-4 zone to the MU-6 zone. As detailed in FF No. 85, the Commission finds that the requested map amendment is consistent with Future Land Use Map designation of mixed-use Medium-Density Commercial and Medium-Density Residential.

Waiver of the Minimum Land Area Requirements of 11-X DCMR § 301.1

28. Since the Property has a land area of approximately 13,306 square feet where a minimum of 15,000 square feet of land area is required pursuant to 11-X DCMR § 301.1, the Applicant requested a waiver of the minimum land area requirements of 11-X DCMR § 301.1.

29. The Commission may waive not more than 50% of the minimum area requirements provided: (i) the Commission finds after a public hearing that that development is of exceptional merit and in the best interest of the District or country; and (ii) at least 80% of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto. (11-X DCMR § 301.2.)
30. The Commission finds that the Project is of exceptional merit and in the best interest of the city. The Project will significantly improve the existing area by replacing a surface parking lot with a mixed-use project that will activate the surrounding streets and is just three blocks from the Mt. Vernon Square/7th Street/Convention Center Metrorail Station. Further, the Project will result in new affordable housing. Under the LDDA, the Applicant is required to set aside 30% of the total residential units as affordable units. Half of the affordable units will be reserved for households earning up to 50% of the AMI and half of the affordable units will be reserved for households earning up to 80% of the AMI.
31. The Commission finds that greater than 80% of the GFA is devoted to residential use as shown on Sheet A-03 of the architectural drawings (“Plans”) dated May 5, 2017. (Ex. 26A1-26A11.)

Existing and Proposed Zoning

32. The Property is presently zoned MU-4. The MU-4 zone is designed to permit moderate-density mixed-use development and provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core. (11-G DCMR § 400.3(a)-(b).) The MU-4 zones shall be located in Low- and Medium-Density Residential areas with access to main highways or rapid transit stops, and shall include office employment centers, shopping centers, and medium-bulk mixed-use centers. (11-G DCMR § 400.3(c).) As a matter of right, property in the MU-4 zone can be developed with a maximum density of 2.5 FAR and the maximum FAR for nonresidential use is 1.5 FAR. (11 11-G DCMR § 402.1.) The maximum matter-of-right building height in the MU-4 zone is 50 feet. (11-G DCMR § 403.1.)
33. The Applicant proposes to rezone the Property to the MU-6 zone, which permits the following development standards:
 - Height: 90 Feet. (11-G DCMR § 303.7.);
 - Density: 6.0 FAR, and 7.2 FAR with the Inclusionary Zoning Bonus. The maximum FAR for non-residential use is 2.0; (11-G DCMR § 402.1.)
 - Lot Occupancy: The maximum lot occupancy for residential use is 80%; (11-G DCMR § 404.1.)
 - Rear Yard: The minimum rear yard is 15 feet; (11-G DCMR § 405.2.)

- Side Yard: No side yard is required for a building or structure other than a detached single dwelling unit or semi-detached single dwelling unit; however, if a side yard is provided, it shall be at least two inches wide for each one foot of height of building but no less than five feet; (11-G DCMR § 406.1.)

- Parking:
 - Residential, multiple dwelling unit: one per three dwelling units in excess of four units;

 - Retail use: 1.33 per 1,000 square feet in excess of 3,000 square feet;

 - Office: 0.5 per 1,000 square feet in excess of 3,000 square feet, except a medical or dental office, clinic, or veterinary hospital: one per 1,000 square feet in excess of 3,000 square feet; and (11 DCMR Subtitle C § 701.5.)

 - Within any zone other than an R or RF zone, the minimum vehicle parking requirement identified in the table of Subtitle C § 701.5 shall be reduced by 50% for any Property which is located within 0.5 miles of a Metrorail station that is currently in operation or is one for which a construction contract has been awarded; (11-C DCMR § 702.1(a).)

- Bicycle Parking:
 - Residential Apartment: one space for each three dwelling units (long term); one space for each 20 dwelling units (short term);

 - Retail: one for each 10,000 square feet of gross floor area (long term); one for each 3,500 square feet of gross floor area (short term); and

 - Office: one for each 2,500 square feet of gross floor area (long term); one for each 40,000 square feet of gross floor area (short term);

(11-C DCMR § 802.1.)

- Loading:
 - Residential More than 50 Units: one loading berth and one service/delivery space;

 - Retail with 5,000 to 20,000 square feet of gross floor area: one loading berth;

 - Office with 20,000 to 50,000 square feet of gross floor area: one loading berth and one service delivery space; and

(11-C DCMR § 901.1.)

- When two or more uses in different use categories share a building or structure, the building or structure is only required to provide enough berths and spaces to meet the requirement for the use category with the *highest requirement*, and *not the combination of requirements* for all use categories provided that all uses that require loading have access to the loading area; and (11-C DCMR § 902.2.)
- Green Area Ratio (“GAR”): The minimum required GAR for the MU-6 Zone is 0.3. (11-G DCMR § 407.1.)

Description of the PUD Project

34. As shown on Sheet A-03 of the Plans, the Applicant proposes to redevelop the Property with a mixed-use Project. The Project will include residential use, generating approximately 85 units, and non-residential uses, comprised of street-level retail uses, and approximately 1,500 square feet of space for use by the Church. The Project will have a density of up to 7.2 FAR and a maximum building height of approximately 98 feet. The Project includes a single penthouse enclosure that will contain both habitable space and mechanical space, and that will have a maximum height of 20 feet. All portions of the penthouse are setback in accordance with the Zoning Regulations.
35. Since the Project is located within 0.5 miles of the Mt. Vernon Square/7th Street/Convention Center Metrorail station, the minimum vehicle parking requirement is reduced by 50%. Therefore, instead of 28 parking spaces, the Project is only required to have 14 parking spaces. (See 11-C DCMR §§ 701.5 and 702.1(a).) The Project will have 23 parking spaces in a below-grade parking garage. Vehicular access to the garage and to the associated loading facilities will be from the public alley immediately west of the Property to minimize vehicular-pedestrian conflict. The Project’s ground-level commercial space intended to activate the surrounding streets.
36. The Project includes significant public space improvements, including streetscape improvements such as shade trees and ground-plane planting, decorative planters for seasonal display, streetlights, bicycle racks, and seating. The proposed public space amenities related to retail uses include sidewalk café space along O Street defined by moveable planters. Townhouse gardens will be fenced and provide visual continuity through a similar pattern of planting and hardscape improvements as is found to the south in front of the existing townhouses.
37. Vehicular access to the parking ramp and loading facilities will occur from the adjacent alley on the west side of the Property, which will result in the elimination of the existing curb cut on 8th Street. This will minimize vehicular and pedestrian conflicts, improve the pedestrian character of the street, and provide an opportunity for additional street parking.

The Project will include both long-term and short-term bicycle spaces consistent with the requirements of the Zoning Regulations.

38. The Property is well served by several mass transit options, including the Mt. Vernon Square/7th Street/Convention Center Metrorail Station and eight Metrobus and Circulator routes, within 0.2 miles of the Property. The Property is also located within three and a half blocks of three existing Capital Bikeshare stations and is presently surrounded by walkable connections to all of the aforementioned forms of transit. As a result of the redevelopment of the Property, all public space surrounding the Project will be improved to promote a pedestrian-friendly environment with an activated streetscape. All adjacent curb ramps and crosswalks will be improved to current DDOT accessibility standards if they do not currently comply.
39. Under the LDDA, the Applicant is required to set aside 30% of the total residential units as affordable units. Half of the affordable units will be reserved for households earning up to 50% of AMI and half of the affordable units will be reserved for households earning up to 80% of AMI. All of the affordable units will be in the multifamily section of the PUD; none of the units at the ground level along 8th Street will be set aside as affordable.
40. The Project serves as a bridge from the existing two- and three-story row houses in the neighborhood to the larger Shaw developments, including CityMarket at O. The Project appreciates the existing 8th Street townhouse architecture through a purposeful tapering and varying of heights among the mixed-use components of the Project.
41. At its highest elevation, the building will utilize thin light colored brick frames with expansive areas of glass providing residents in the tallest portion of the building with light-filled spaces from which to enjoy expansive views of the city. Some of the residential units will enjoy projected, private balconies and living spaces as well as freely accessible rooftop gardens offering special moments for residents to interact with neighbors.
42. Lower-tiered residential units serve as a link to the materials that typify the neighborhood by the use of elongated and highly variegated, mid-tone bricks to give this portion of the building welcoming warmth and texture by creating a pronounced horizontal grain to the building. This particular brick is especially vibrant, adding a palpable feeling of presence to the building. Ample, punched openings provide abundant light and air for its residents while also offering them a chance to escape outside onto their private exterior balconies overlooking 8th and O Streets.
43. The building's layered approach is punctuated by the creation of three and a half-story townhouses along 8th Street that display crisp, faceted window frames that echo the proportion and scale of the adjacent homes while also creating an elegant and contemporary expression. These townhouses help create a rich and varied mix of activities at the street level. They also provide a lively mix of housing options, each with

its own access to exterior balconies, rooftop gardens, and courtyard environments to create pockets of space that provide chances for casual interactions and gatherings among friends surrounded by planters, decks and benches. Adjacent to the townhouse there will be new and exciting retail opportunities to compliment the nearby existing galleries, restaurants, cafes, boutiques, all headlined by the Giant at CityMarket at O.

44. At the street level, the paving and landscape features for the Project will marry up to those of CityMarket at O, helping to stitch 8th Street seamlessly together to the north, enhancing walkability and providing similar ground cover plantings, trees, bicycle racks, and light fixtures.
45. Ultimately, the elegant design vision is meant to compliment and enliven the community while also providing exciting and amenable living and neighborhood shopping opportunities for mixed-income levels.

Zoning Flexibility

46. The Applicant requested the areas of flexibility discussed below from the Zoning Regulations.
47. Minimum Rear Yard Requirements. The Applicant requested flexibility to have a rear yard of six feet in lieu of the 15 feet that is required pursuant to 11-G DCMR § 405.2. The reduced rear yard will not result in any adverse impacts to the open space on the Property or on nearby properties. There is ample open space, light, and air surrounding the building in all directions.
48. Minimum Open Court Width Requirements. The Applicant requested flexibility to have an open court (open court 4) that is five feet in width, where a minimum open court width of 26.3 feet is required under 11-G DCMR § 202.1. The Applicant also requested flexibility to have an open court (open court 1) that is one foot in width, where a minimum open court width of 10 feet is required under 11-G DCMR § 202.1.
49. Maximum Lot Occupancy Requirements. The Applicant requested flexibility to have a building with a maximum lot occupancy of 100% at the lowest residential level, which is the street level of the Project, where a lot occupancy of 80% is permitted under 11-G DCMR § 404.1. However, the lot occupancy is reduced at the higher levels of the building. For example, at the second level of the building, the lot occupancy is 86.7% and at the fourth level of the building, the lot occupancy is 69%.
50. Minimum Loading Requirements. The Applicant requested flexibility to provide a 30-foot loading berth and a 100-square-foot loading platform in lieu of a 30-foot loading berth and a 100-square-foot loading platform and one service delivery space as required under 11-C DCMR § 901.1 of the Zoning Regulations. The Applicant's traffic consultant has evaluated the proposed loading and has confirmed that the proposed loading is sufficient to accommodate the expected demand.

51. Proportionality of Affordable Units. The Applicant is required to set aside 30% of the total residential units as affordable units, for the life of the Project. The Applicant requested flexibility to have all of the affordable units within the multifamily section of the PUD and none in the ground-level units along 8th Street, as provided in the LDDA.

Additional Development Flexibility

52. The Applicant also requested flexibility in the following additional areas:
- (a) To be able to provide a range in the number of residential units of plus or minus 10%, so long as 30% of the total number of units are set aside as affordable units in accordance with the LDDA;
 - (b) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - (c) To vary the sustainable design features of the Project, provided the total number of LEED points achievable for the Project is not below the LEED-Gold rating standards under the United States Green Building Council LEED for New Construction v2009;
 - (d) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and any other changes in order to comply with all applicable District of Columbia laws and regulations or that are otherwise necessary to obtain a final building permit, provided the variations do not change the exterior configuration or appearance of the building;
 - (e) In the retail and service areas, flexibility to vary the location and design of the ground floor components of the Project in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use and to accommodate any specific tenant requirements; and to vary the size of the retail area;
 - (f) To vary the features, means, and methods of achieving: (i) the code-required GAR of 0.3, and (ii) stormwater retention volume and other requirements under 21 DCMR, Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control;

- (g) To vary the location, attributes and general design of the streetscape incorporated in the PUD to comply with the requirements of and the approval by the DDOT Public Space Division;
- (h) To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved plans; and
- (i) To locate retail entrances in accordance with the needs of the retail tenants and vary the façades as necessary within the general design parameters proposed for the PUD and to vary the types of uses designated as “retail” use on the approved Plans to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)).

Project Benefits and Amenities

- 53. Urban Design and Architecture; Landscaping and Open Space; Property Planning & Efficient & Economical Land Utilization (§ 305.5(a) – (c)). As a natural extension of CityMarket at O, the Project will be a major catalyst to the continued revitalization of Shaw. Vehicular access to the parking ramp and loading facilities will occur from the adjacent alley along the west side of the Property, which will result in the elimination of the existing curb cut on 8th Street that currently serves the Property and also minimize vehicular and pedestrian conflicts, improve the pedestrian character of the street, and provide an opportunity for additional street parking. Architecturally assembled from a collection of forms, each with its own unique expression, the Project serves as a bridge from the existing two and three story row houses in the neighborhood to the larger Shaw developments, including City Market at O.
- 54. Affordable Housing (§ 305.5(g)). The Applicant is required to set aside 30% of the total units within the Project as affordable units, for the life of the Project. Half of the affordable units will be reserved for households earning up to 50% of AMI and the other half of the affordable units will be reserved for households earning up to 80% of AMI. The Applicant will set aside the affordable units in accordance with the following chart:

Residential Unit Type	Floor Area/ % of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	77,276/100%	85				
Market Rate	58,881/76%	59				
Affordable Non-IZ	9,432/12%	13	Up to 80% AMI	Life of the Project	To be determined	15.3% of total units
Affordable Non-IZ	8,963/12%	13	Up to 50% AMI	Life of the Project	To be determined	15.3% of total units

55. The above chart indicates that none of the affordable housing will be subject to the Inclusionary Zoning requirements set forth in Subtitle C, Chapter 10 of Title 11 DCMR. This is because the Applicant will be requesting the Zoning Administrator to grant an exemption from those requirements pursuant to 11-C DCMR § 1001.6. The Commission makes no finding as to whether the exemption should be granted and notes that if the request is denied the requirements of Chapter 10 of Title 11-C DCMR, as well as the Inclusionary Zoning Act as defined at 11- B DCMR § 100.1, will apply.
56. Employment and Training Opportunities (§ 305.5(h)). The Applicant has entered into First Source and Certified Business Enterprise agreements with the District. It is estimated, based on the projected construction spending of the development program presented in the District RFP, the Project will create a total of 185 construction jobs and 17 permanent jobs. This includes 146 full-time and 39 part-time FTE employees. The Applicant's commitment to the CBE program would lead to 98 of these jobs being held by District-based CBEs. Further, at build out, the Project will generate a total of 17 permanent jobs, including 10 full-time FTE. Based on the Applicant's commitment to local hiring, it is anticipated that a minimum of nine of these jobs will be filled by District residents.
57. Environment and Sustainable Benefits (§ 305.5(k)). The Project will achieve a minimum of 60 LEED points, which is equivalent to LEED-Gold certification under the United States Green Building Council LEED for New Construction v2009. Additionally, the roof of the elevator overrun, the roof of the penthouse, and a portion of the penthouse level patio space will be planted with an extensive green roof system. Much of this terrace will be planted with ornamental trees, shrubs, and ground plane plantings. The roof of the portion of the building that extends below grade will function as a planted courtyard with small terraces provided for two of the units that the interior courtyard. In addition to cooling the environment, the planted roof areas will be used to manage storm water runoff.
58. Transportation Infrastructure (§ 305.5(o)). As part of the Project, the Applicant will widen a portion of the adjacent alley by five feet (from 10 feet to 15 feet). When considered in conjunction with the additional 10 feet of alley being constructed as part of the PUD immediately to the west of the Property, the future alley will provide improved functionality for all users. In addition, the Applicant developed a Transportation Demand Management ("TDM") to promote non-auto modes of transportation.
59. Uses of Special Value to the Neighborhood or the District as a Whole ((§ 305.5(q)) are as follows:
- (a) The Applicant will provide 25 parking spaces at the parking garage at CityMarket at O for the Church;
 - (b) The Project will include approximately 1,500 square feet of space for use by the Church;

- (c) The Applicant will contribute a total of \$100,000 to fund events and programs over a two-year period that promotes the retail and restaurant venues in the Shaw neighborhood. Confirmation of the monetary contribution and the events/programs that will be funded shall be documented in an agreement between the Applicant and a local organization, which shall be submitted to the Zoning Administrator prior the issuance of a certificate of occupancy for the retail component of the PUD; and
- (d) The Applicant will contribute \$25,000 to the Department of Parks and Recreation, which is to be utilized to enhance programming for youth activities at the Kennedy Recreation Center.

Comprehensive Plan

- 60. The Commission finds that the PUD advances the purposes of the Comprehensive Plan; is consistent with the Future Land Use Map and Generalized Policy Map; complies with the guiding principles in the Comprehensive Plan; furthers a number of the major elements of the Comprehensive Plan; and is not inconsistent with the Convention Center Area Strategic Development Plan.
- 61. Purposes of the Comprehensive Plan. The purposes of the Comprehensive Plan are six-fold: (1) to define the requirements and aspirations of District residents, and accordingly influence social, economic, and physical development; (2) to guide executive and legislative decisions on matters affecting the District and its citizens; (3) to promote economic growth and jobs for District residents; (4) to guide private and public development in order to achieve District and community goals; (5) to maintain and enhance the natural and architectural assets of the District; and (6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (D.C. Code §1-245(b) (§ 1-301.62).) The Commission finds that the Project advances these purposes by promoting the social, physical and economic development of the District through the provision of a high-quality residential development that will increase the housing supply, improve the District's natural and architectural assets, promote economic growth and jobs for District residents, and improve the surrounding community. The Project will achieve community goals by providing significant new affordable housing, and will do so through the construction of aesthetically pleasing new buildings that respect the character of the surrounding neighborhood without generating any adverse impacts.
- 62. Future Land Use Map. According to the District of Columbia Comprehensive Plan Future Land Use Map, the Property is designated as mixed-use Medium-Density Commercial and Medium-Density Residential. The Medium Density Commercial designation is used to define shopping and service areas that are somewhat more intense in scale and character than the moderate-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation generally draw from a citywide market area. Buildings are generally larger and/or taller than those in moderate-

density commercial areas but generally do not exceed eight stories in height. The corresponding zone districts are generally C-2-B, C-2-C, C-3-A, and C-3-B, although other districts may apply. (10A DCMR § 225.10.) These zone districts correspond to the MU-5, MU-6, MU-7, and MU-8 zones under the Zoning Regulations of 2016. The Medium-Density Residential designation is used to define neighborhoods or areas where mid-rise (four-seven stories) apartment buildings are the predominant use. Pockets of low- and moderate-density housing may exist within these areas. The Medium-Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C zone districts are generally consistent with the Medium-Density designation, although other zones may apply. (10A DCMR § 225.5.) These zone districts correspond to the RA-2 and RA-3 zones under the Zoning Regulations of 2016.

63. The Framework Element of the Comprehensive Plan provides that the Land Use Map is not a zoning map. (*See* 10A DCMR § 226.1(a); *see also* Z.C. Order No. 11-13; Z.C. Order No. 10-28.) Whereas zoning maps are parcel-specific and establish detailed requirements for setback, height, use, parking, and other attributes, the Future Land Use Map does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. (*Id.*) By definition, the Map is to be interpreted broadly. (*Id.*) Furthermore, the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. The granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here. (*Id.* at § 226.1(c).) The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans. (*Id.* at § 266.1(d).)
64. Thus, in evaluating the proposed map amendment, the Property should be viewed in context and not as an isolated parcel. When taken in context with the surrounding neighborhood, the Commission finds that the Applicant's proposal to rezone the Property from the MU-4 zone to the MU-6 zone in order to construct the mixed-use project with significant new housing, affordable housing, and neighborhood-serving retail is consistent with the Comprehensive Plan's designation of the Property, particularly given the fact that the MU-6 zone (previously, the C-2-B zone district) is specifically identified as a corresponding zone district in the Medium-Density Commercial category.
65. Generalized Policy Map. The Property is located in the Neighborhood Commercial Center category on the District of Columbia Comprehensive Plan Generalized Policy Map. Neighborhood Commercial Centers are intended to meet the day-to-day needs of residents and workers in the adjacent neighborhoods. Their service area is usually less than one mile. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and child care. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. (10A DCMR § 223.15.)

66. The Commission finds that the proposed rezoning and PUD redevelopment of the Property is consistent with the policies indicated in the Neighborhood Commercial Center category, since the Project will provide community-serving retail that will meet the day-to-day needs of residents and workers in the proposed building.
67. The Convention Center Area Strategic Development Plan. The Commission finds that the Project is consistent with the Convention Center Strategic Development Plan's development guide for the square, which indicates that vacant sites in this locale should be considered for high- and medium-density residential development with improved storefront facades. (Convention Center Area Strategic Development Plan, p. 35.)
68. Guiding Principles and Major Elements of the Comprehensive Plan. The Commission further finds that the PUD is consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as discussed in the paragraphs below.
69. Managing Growth and Change. The Commission finds that the PUD is consistent with the guiding principles of the Managing Growth and Change Element. In order to manage growth and change in the District, the Comprehensive Plan encourages, among other goals, the growth of both residential and non-residential uses. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods. The Project is fully consistent with each of these goals. Redeveloping the Property as a vibrant mixed-use building with residential, retail, and office uses will further the revitalization of the surrounding neighborhood. The proposed retail and office spaces will create new jobs for District residents, further increase the city's tax base, and help to reinvigorate the existing neighborhood fabric.
70. Creating Successful Neighborhoods. The Commission finds that the PUD is consistent with the guiding principles of the Creating Successful Neighborhoods Element. The guiding principles for creating successful neighborhoods include improving the residential character of neighborhoods. (10A DCMR § 218.1.) The production of new affordable housing is essential to the success of neighborhoods. (10A DCMR § 218.3.) Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. (10A DCMR § 218.8.) The Commission finds that the Project furthers each of these guiding principles with the construction of significant new housing, including replacement public housing units and workforce affordable units. As part of the PUD process, the Applicant worked closely with ANC 6E and other community stakeholders to ensure that the Project provides a positive impact to the surrounding neighborhood.

71. Connecting the City. The Commission finds that the PUD is consistent is consistent with the guiding principles of the Connecting the City Element. One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development; from development of the Comprehensive Plan to implementation of the plan's elements. The Project furthers this goal since the Applicant has been working with ANC 6E to ensure that the Project provides a positive impact on the immediate neighborhood.
72. Building Green and Healthy Communities. The Commission finds that the Project is consistent with the guiding principles of the Building Green and Healthy Communities Element. A major objective for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. The Project will include a substantial number of sustainable design features and will achieve a LEED-Gold certification.
73. The Commission also finds that the PUD furthers the objectives and policies from various elements of the Comprehensive Plan, including the Land Use, Transportation, Housing, Environmental Protection, Urban Design Citywide elements, and the Near Northwest Area Element, as set forth in the Applicant's Statement in Support and the OP Reports. (Ex. 5, 13, 27, 34.)

Office of Planning Reports

74. On February 3, 2017, OP submitted a setdown report recommending that the application be set down for a public hearing. (Ex. 13.) The OP report stated that the Project "is not inconsistent with the Comprehensive Plan or the Convention Center Area Strategic Development Plan." (Ex. 13, p. 3.) The report also recommended that the Applicant provide the following: (i) information regarding the management of the specified funds to the community; (ii) comprehensive transportation review and transportation demand management (TDM) measures; (iii) information on the flexibility requests; (iv) discussion about projections into public space or modification as requested by OP Public Space staff; and (v) information on whether the Project would be LEED-GOLD certified.
75. On May 15, 2017, OP submitted a hearing report reiterating that the application is not inconsistent with the Comprehensive Plan and as such OP recommends that the Commission approve the subject application." (Ex. 27, p. 1.) More specifically, the OP report noted that the Project would "realize the [Comprehensive Plan's] land use policies as the project's massing and variety in scale seek to protect the integrity of the residential structures along 8th Street, while respecting its historic character through the proposed rowhouse design...The project is also an efficient use of land in close proximity to the metro, since it removes a parking lot with infill of a variety of housing types at a lower level of affordability than would be anticipated at a metro location and for rent." (*Id.* at 14.)

DDOT Report

76. On May 15, 2017, DDOT submitted a hearing report. (Ex. 28.) The DDOT hearing report indicated no objection to the application subject to the following conditions:
- (a) Provide a transit information screen (electronic screen) in the residential lobby;
 - (b) Identify TDM Coordinators (for planning, construction, and operations). The TDM Coordinator will work with residents and employees in the building to distribute and market various transportation alternatives and options;
 - (c) Unbundle parking from leases or purchases of all units and charge market rate, defined as the average cost for parking within a quarter-mile of the Property on a weekday; and
 - (d) Enhance the TDM plan to include the following elements:
 - i. For the first three years after the building opens, provide one annual Capital Bikeshare membership to the first residents of each individual unit. This benefit shall be codified in the rental/condominium documents;
 - ii. Provide a bicycle repair station in the bicycle storage room;
 - iii. Provide updated contact information for the TDM Coordinator and report TDM efforts and amenities to goDCgo staff once per years; and
 - iv. Provide six short-term bicycle spaces (three inverted U-racks).
77. At the public hearing, the Applicant agreed to all of DDOT's conditions.

ANC Report and testimony

78. ANC 6E submitted a resolution in support of the Project, indicating that at its regularly scheduled and duly noticed public meeting of March 7, 2017, at which a quorum of commissioners was present, ANC 6E voted 5-0-2 to support the application. (Ex. 19.) The resolution stated that ANC 6E supports the application. The report listed a number of reasons the ANC supported the Project. The report did not list any issues or concerns.
79. Commissioner Alex Padro, the Chair of ANC 6E and the single member district representative for the Property, testified in support of the application at the public hearing.

Interagency Review

80. OP circulated the application to DDOT, Office of the State Superintendent of Education (“OSSE”), the Department of Housing and Community Development (“DHCD”), the Department of Energy and the Environment (“DOEE”), and DC Water for their review of the Project. On March 9, 2017, an interagency meeting was held to review the Project. At the meeting and subsequent to the meeting, DDOT, OSSE, DHCD, OP, DOEE, and DC Water submitted comments to the Applicant, as stated in the Applicant’s supplemental prehearing statement. (Ex. 26.) The Commission finds that the Applicant sufficiently answered all of the outstanding questions posed by the relevant District agencies in its Supplemental Prehearing Statement.

Contested Issues

81. No witnesses testified in opposition to the Project at the public hearing, but one letter in opposition was submitted to the record on May 25, 2017, by DC for Reasonable Development and OneDC (collectively the “Opposition”). (Ex. 33.) The letter contains statements that express disagreement with the following:

- The terms and conditions of the LDDA established between the Applicant and the D.C. Council regarding the disposition and redevelopment of the Project site;
- The amount and make-up of the affordable housing provided as part of the proposed Project;
- Consistency of the proposed density with the Comprehensive Plan and related policies;
- Compliance of the proposed Project with the Fair Housing Act and the D.C. Human Rights Act;
- The potential for the Project to cause displacement and gentrification; and
- The extent of analysis conducted regarding the potential impacts of the Project.

82. The Commission has carefully reviewed the issues raised by the Opposition and makes the findings discussed below.

83. LDDA approved by the D.C. Council:

- (a) The Comments submitted by the Opposition relating to the terms and conditions of the LDDA between the Applicant and the Council have no bearing on the Commission’s review of the Project under the Zoning Regulations. The terms under which the District will dispose of the Property to the Applicant, and the

requirements the Applicant must satisfy as part of the District's disposal, are matters that were handled by the D.C. Council through the legislative process that involved public hearing(s) and opportunities for public comment. These are terms that were negotiated between the Applicant and DMPED. Thus, if the Opposition wished to express its views regarding the terms of the District's disposal of the Property it should have expressed those views during the D.C. Council's legislative process;

- (b) Notwithstanding, as is demonstrated in the case record, the Applicant will meet or exceed all of the conditions required under the LDDA, including the condition pertaining to the percentage of affordable multi-family units. With respect to the amount of affordable housing provided, the Applicant will devote 30% of all multi-family units as affordable units. Specifically, the Project will contain approximately 85 dwelling units (79 multi-family and 6 townhomes), of which 26 dwelling units (approximately 30%) will be devoted to affordable units. Finally, executed copies of the First Source and CBE Agreements for the Project have been entered into the case record. (Ex. 5J, 5K.) The Applicant has satisfied those particular requirements of the LDDA; and
- (c) The Opposition contends that because the LDDA requires 30% of the units to be affordable, this serves as a minimum or a floor, and the Applicant must therefore devote a higher percentage of affordable units than proposed. This contention is without merit. In *D.C. Library Renaissance Project/W. End Library Advisory Grp. V. D.C. Zoning Comm'n*, 73 A.3d 107 (D.C. 2013), this Commission held, and the District of Columbia Court of Appeals affirmed, that just because something is required under a land acquisition agreement with the District does not mean the requirement makes a proffered PUD benefit null or duplicative. (*Id.* at 122 (opining that construction of library required under contract with the District was still considered a benefit of the PUD).)

84. Amount and make-up of affordable housing provided as part of the Project:

- (a) In its Comments, the Opposition states “[s]ince the PUD site is public land, a “substantial” amount of affordable housing, particularly affordable for low-income DC families, is required through zoning development review via the directives of the Comprehensive Plan.” (Ex. 33, p. 1.) As clearly demonstrated in the case record, and particularly in the OP's final report, the Project will contain a substantial amount of affordable housing for low-income District residents, including families. Pursuant to the LDDA, the Project will substantially exceed the amount of affordable housing that would be required under IZ, and that would typically be proffered as part of a PUD of similar size; (Ex. 27, p. 22.)
- (b) The Opposition argues that this Project must “...strive for 100% affordability and for 100% family units, especially given it is proposed to be built on public land.” (Ex. 33, p. 3.) The PUD regulations do not even require affordable housing to be

offered as a public benefit. When affordable housing is proffered as a public benefit, the only requirement is that the amount provided exceeds the minimum required by IZ in the existing zone district. Furthermore, the Zoning Regulations make clear that this Commission cannot impose public benefits; the Commission, however, must deny a PUD application when the benefits are inadequate. (11-X DCMR 305.11.) Here, the Applicant goes beyond the IZ requirements, both in terms of quantity and deeper affordability;

- (c) Specifically, as shown in OP's final report, under IZ the Applicant would be required to set aside eight percent of the total residential GFA, to affordable housing for low- and moderate-income households. Per the requirements of the LDDA, the Applicant is devoting 30% of all of the units in the Project as affordable-housing for low- and moderate-income households. The total floor area of the 26 affordable units is substantially more affordable GFA than what would be required under IZ; the GFA of the affordable units is actually three times the amount required under IZ. The Opposition argued that the "...PUD Applicant's proposed 80% AMI units are not considered affordable in DC..." (Ex. 33, p. 2.) This is simply incorrect; 80% AMI units are explicitly stated under the Inclusionary Zoning Regulations, as well as in the IZ Act adopted by the D.C. Council. The Applicant's affordable housing proffer is identified in B.1 of the "Decision" section of this Order; and
- (d) Finally, contrary to the Opposition's claims that, under the LDDA the Applicant and/or the District "can cancel the affordability covenant at any time upon their own discretion and without public review or provision of rationale," the affordable dwelling units provided in the Project will remain affordable (at the required levels of affordability) for the life of the Project.

85. Consistency of the proposed density with the Comprehensive Plan and related policies:

- (a) According to the Opposition, the density of the Project exceeds what is permitted by the Comprehensive Plan policies, "...especially as these policies relate to protecting the low-rise building environment of the surrounding area" (citations omitted). (Ex. 33, p. 2.) As discussed in the Applicant's initial statement, and in the Applicant's Comprehensive Plan analysis, the Project is consistent with the density considered appropriate for the Property under the mixed-use Medium-Density Commercial/Medium-Density Residential designation on the Comprehensive Plan Future Land Use Map ("FLUM"). (Ex. 5, 34.) Specifically, the application includes a related map amendment to rezone the Property from MU-4 (formerly, C-2-A) to MU-6 (formerly, C-2-C). According to FLUM category definitions contained in the Framework Element of the Comprehensive Plan, the MU-6 (formerly, C-2-C) zone is considered a Medium-Density Commercial zone. (10-A DCMR § 225.10.) Furthermore, the proposed density of the Project does not utilize any of the additional density that is permitted for a PUD in the MU-6 zone. Rather, notwithstanding the substantial public benefits

and project amenities being provided by the Applicant as part of the Project, the proposed density remains within the matter-of-right density permitted in the MU-6 zone for developments that are subject to the IZ regulations;

- (b) Contrary to the Opposition's comments that the Project is inconsistent with Comprehensive Plan policies relating to the protection of the scale of the "low-rise building environment of the surrounding area," the specific policies cited by the Opposition do not describe the existing building environment of the surrounding area as being "low-rise." Rather, the policies cited by the Opposition encourage the exact type of development proposed by the Applicant. Specifically, the Opposition refers to the following two policies contained within the Near Northwest Element – Shaw/Convention Center Policy Focus Area, which includes the Property:
- i. Policy NNW-2.1.2: Reinforce Existing Development Patterns - Stabilize and maintain existing moderate-density row house areas within the Shaw/Convention Center Area. Locate multi-unit buildings in areas already zoned for greater density, including areas near the Mount Vernon Square and Shaw/Howard University Metrorail stations, and on publicly owned land with the potential for housing. Ensure that development on infill sites scattered throughout the row house portions of the Shaw/Convention Center area is consistent with the neighborhood's character; and (10-A DCMR § 2111.6.)
 - ii. Policy NNW-2.1.3: Shaw/Howard University and Mount Vernon Square Metro Stations - Encourage mixed-income residential development with underground parking adjacent to the Shaw/Howard and Mount Vernon Square Metro stations, particularly on existing surface parking lots; and (10-A DCMR § 2111.7.)
- (c) With respect to Policy NNW-2.1.2, the Project consists of a multi-unit building located in in close proximity to the Mount Vernon Square Metrorail station and can accommodate additional density consistent with the Property's Comprehensive Plan FLUM designation of Mixed-Use Medium-Density Commercial/Medium-Density Residential. Also, as explicitly encouraged by this policy, the Project will replace what is currently underutilized publically owned land used as surface parking with a new, mixed-use development that consists of additional housing, including a substantial amount of affordable housing that greatly exceeds the amount of affordable housing that would otherwise be required as a matter of right under the IZ requirements. The Project is also consistent with Policy NNW-2.1.3 as it provides mixed-income residential development with underground parking on a site that is in close proximity to the Mount Vernon Square Metrorail station. Based upon the Project's consistency with the FLUM; consistency with the policies of the Near Northwest Element, including those discussed above; and the Project's consistency with numerous

other Comprehensive Plan policies contained within the Land Use, Economic Development, Housing, Urban Design, Environmental Protection, and Parks, Recreation, and Open Space Elements, as discussed in the Applicant's Comprehensive Plan analysis and the reports submitted by the Office of Planning. The Commission finds that the Project is not inconsistent with the Comprehensive Plan. (Ex. 5, 13, 27, 34.)

86. Maintenance of Working-Class Families:

The Opposition also argues that the Project “fails the Comprehensive Plans policies seeking to maintain working-class families across a spectrum of bedroom sizes in [the] Shaw neighborhood.” (Ex. 33, p. 1.) The letter contains no basis for this assertion. While it remains the applicant's burden to make its case, it need not respond to conclusory statements.

87. Compliance of the proposed Project with the Fair Housing Act and the D.C. Human Rights Act:

The Opposition also argues that the “...proposed PUD [habitable] penthouse ...won't be accessible to low-income residents and [therefore] fails the Fair Housing Act and Human Rights Act.” (Ex. 33, p. 1.) This Commission notes that only a court of law can make such a determination. In addition, this Order does not require that the penthouse space be offered at the market rate. The Zoning Regulations that govern habitable penthouse space permit the resulting IZ units to exist anywhere in a residential building, as long as IZ units are not concentrated on a single floor. (11-C DCMR § 1005.4.)

88. Potential for the Project to cause displacement and gentrification:

- (a) The Opposition makes several claims that the Project will cause displacement of existing residents, exacerbate gentrification, adversely impact vulnerable and at-risk existing affordable housing in the surrounding area, and continue to destabilize existing family homes in the surrounding area. Not only does the Opposition fail to provide any information or analysis of its own to verify these claims, several studies show that developments such as that proposed by the Applicant help mitigate the effects of gentrification, displacement of existing residents, and destabilization of land values;
- (b) While the Opposition suggests that the District is failing to address the issue of affordable housing, it is clear based on consistent statements by the Mayor and the D.C. Council, and the stated missions of several District agencies, that affordable housing is at the forefront of issues being addressed by the District. For example, in her first budget Mayor Muriel Bowser devoted an historic \$100 million to the Housing Production Trust Fund, putting an unprecedented number of affordable housing units into the pipeline, and in 2016 assigned the DC Housing Preservation Strike Force the task of coming up with recommendations for

preserving affordable housing within the District. In addition, DHCD identifies the production and preservation of quality affordable housing as its top priority, and offers several programs that are specifically focused on addressing issues of displacement. Finally, DMPED has demonstrated its dedication to addressing the challenges of gentrification and displacement through its New Communities Initiative. Thus, it is clear the District, in partnership with the private sector, is dedicated to addressing the affordable housing crisis in the District through a multi-pronged strategy that includes several programs across multiple departments and agencies;

- (c) With respect to displacement, the Project will not directly displace any existing residents, including residents living in existing affordable housing, since the Property is currently improved with a surface parking lot. Therefore, construction of the Project will only result in an increase in the amount of market-rate and affordable housing in the surrounding area and the District. With respect to the potential for indirect displacement, the Opposition states that “[t]he vast majority of market-rate and luxury penthouse units as proposed in this PUD application can and will continue to destabilize the existing family homes in the surrounding area, specifically in [the] context of the cumulative large projects in the areas.” (Ex. 33, p. 2.) In contrast to this unsubstantiated statement, actual analysis conducted by the District has shown that increases in market rate housing have not impacted lower income residents. According to a report entitled Bridges to Opportunity, A New Housing Strategy for D.C. (March 2013), prepared by the 2013 Comprehensive Housing Strategy Task Force “the recent increase in market rate housing does not appear to have led to significant gentrification, by which we mean the displacement of lower income residents. In fact, over the past two years of the city’s population growth, the number of people filing income taxes has increased across all income levels citywide. Market rate housing starts are essential to improving the city’s continuum of housing as are public-private investments in affordable housing development”; and (Bridges to Opportunity, A New Housing Strategy for D.C (2013), Pages 7 and 41.)
- (d) Consistent with the above statement, many academic studies and articles have found that construction of new housing in all price ranges, and specifically new affordable housing, is one of the best ways to mitigate increasing prices and rents as it helps address the imbalance between housing demand and housing supply. One such example is research conducted by the Legislative Analyst’s Office of the California Legislature which concluded that “[a]s market-rate housing construction tends to slow the growth in prices and rents, it can make it easier for low-income households to afford their existing homes. This can help to lessen the displacement of low-income households.”¹ This approach to addressing the issue of affordable housing through increasing the supply of new market-rate and affordable housing is also consistent with the priorities recently adopted by a

¹ Legislative Analyst’s Office (2016). Perspectives on Helping Low-Income Californians Afford Housing.

diverse group of D.C. business groups, tenants' groups, developers, affordable housing advocates, faith groups, and over 250 residents regarding revisions to the Comprehensive Plan.² Specifically, the first of these adopted priorities states that the District should meet housing demand by forecasting, planning for, and encouraging the creation and preservation of a supply of housing (market-rate and subsidized affordable) to meet the demand at all income levels. The supply of housing should be sufficient to slow rising costs of rental and for-sale housing. To that end, the Project will not cause or exacerbate gentrification or displacement of existing residents in the surrounding area. Rather, the Project is an example of the type of development that can help mitigate the effects of gentrification and increasing housing costs as it will introduce 85 new housing units into the District's supply of housing, 26 of which will be devoted to affordable housing for the life of the Project, without directly displacing any existing residents or tearing down any existing housing.

89. Extent of analysis conducted regarding the potential impacts of the Project:

- (a) The Opposition claims that the application has been inadequately analyzed with respect to its potential impacts on public services, public transit, infrastructure, environment, noise and air quality, pollution and refuse, light and air, utility capacity, emergency response time, and community facilities (schools, recreation centers, libraries, police stations, fire stations, hospitals, clinics, etc.). (Ex. 33, p. 3.) However, as the case record reflects, the application has in fact undergone a thorough analysis as to its potential impacts by the Applicant, OP, and several other District agencies;
- (b) The Opposition implies that the Commission has an obligation to conduct a "...local demographics analysis of the affected local neighborhood..." and consider the effect the project will have on gentrification. (Ex. 33, pg. 2.) The Opposition further contends that "[t]he Office of Planning must analyze the surrounding area, evaluating land values and individual vulnerable properties through sound survey techniques..." (Ex. 33, p. 2-3). Neither the Commission, nor OP, is obligated to conduct the studies the Opposition urges. Notwithstanding the lack of any obligation to do so, the Commission has fully considered the concerns of the Opposition that are related to gentrification and displacement. As detailed in Finding of Fact No. 88, the Applicant has satisfactorily explained why the project will not result in the destabilization asserted;
- (c) The Opposition argues that "...none of the commercial components of this PUD application have been evaluated to understand their true benefits to the area, or vice-versa [as to] any potential effects." (Ex. 33, pg. 3.) The Commission notes that the commercial components of the proposed PUD were not proffered as

² <http://dchousingpriorities.org/>.

public benefits, and foresees no adverse impacts in their traditional zoning sense (e.g., traffic, noise, parking, etc.);

- (d) OP referred the application for review and comment to DDOT, including the Public Space Committee, OSSE, DHCD, DOEE, DCFEMS, and DC Water. In addition, on March 9, 2017, OP conducted an interagency meeting on the application. A summary of all comments received from these agencies, as well as the Applicant's response, is provided in the Applicant's supplemental prehearing statement and OP's hearing report. (Ex. 26, 27.) In addition, based upon the thorough transportation analysis prepared by the Applicant, DDOT submitted a detailed report that analyzes the potential impacts on the District's transportation network. (Ex. 28.) Overall, the analysis and comments provided by the District agencies assess the potential impacts of the Project on the specific areas identified by the Opposition including, but not limited to, transportation and public space, environment, utilities and public services, schools, and housing;
- (e) With respect to noise-related impacts, the Land Use and Environmental Protection Elements of the Comprehensive Plan contain specific policies relating to avoiding, minimizing, and mitigating noise impacts through land use compatibility, proper regulation of certain commercial and industrial uses, and reducing exposure to excessive noise through enforcement of the District's noise control regulations which are administered by DCRA. With respect to land use compatibility, the Project consists of a mixed-use building containing residential, retail, and a modest amount of office space for the Church. None of these uses inherently cause adverse noise-related impacts and are commonly found throughout the area surrounding the Property. Furthermore, these uses are constructed and operated all over the city in neighborhoods with similar contexts without causing adverse noise impacts. The Comprehensive Plan also contains policies that address the potential impacts of noise on the environment and on the general health and well-being of District residents. Specifically, the Comprehensive Plan states "[a]void locating new land uses that generate excessive noise adjacent to sensitive uses such as housing, hospitals, and schools..." No such uses are proposed as part of the Project; and
- (f) In addition to the analysis of potential impacts that has already been conducted, it is noteworthy that the Project will be required to undergo several other District agency reviews prior to and during construction, including additional detailed reviews of potential environmental impacts on a wide range of topic areas, including air and water quality, as required under the DC Environmental Policy Act. In addition, consistent with the policies of the Comprehensive Plan, construction-related noise, and post-construction noise generated by the residents, employees, and visitors to the Property, will be regulated through enforcement of the District's existing regulations that govern day and nighttime levels of commercial, industrial, and residential land uses, motor vehicle operation, solid waste collection and hauling equipment, and the operation of construction

equipment and other noise-generating activities, which can only be regulated during and after construction of the Project.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; and (c) protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan. (11-X DCMR § 300.1.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of 11-X DCMR, Chapter 3 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential and non-residential uses for the Project are appropriate for the Property. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.
5. The Commission waives the minimum area requirements of 11-X DCMR § 301.1 for the reasons discussed in FF Nos. 28 through 31.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated, and appropriate conditions have been included in this Order.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the PUD benefits and amenities are reasonable tradeoffs for the requested development flexibility.
8. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the

Project will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

9. The Commission is required under § 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 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP reports in this case and, as explained in this decision, finds its recommendation to grant the application persuasive.
10. The Commission is 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. ANC 6E's report expressed no issues or concerns. Because the ANC expressed no issues or concerns, there is nothing for the Zoning Commission to give great weight to. (*See Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The Commission carefully considered the ANC 6E's position supporting approval of the application and concurred in its recommendation of approval.
11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 et seq. (2007 Repl.)).

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a planned unit development and related Zoning Map amendment from the MU-4 zone to the MU-6 zone for Square 399, Lot 68. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The Project shall be developed in accordance with the Plans, dated May 5, 2017. (Ex. 26A1-Ex. 26A11.)
2. In accordance with the Plans, the PUD shall be a mixed-use project containing approximately 85 residential units, and non-residential uses, and street-level retail uses including approximately 1,500 square feet of space for use by the Church.
3. The Project shall have a maximum density of up to 7.2 FAR and shall have a maximum building height of approximately 98 feet. The Project shall include 23 below-grade parking spaces. Vehicular access to the garage and to the associated loading facilities shall be from the public alley along the west side of the

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Property. The roof level of the building and the penthouse level patio space shall be landscaped substantially in compliance with the Composite Roof Plan on Sheet L-02 of the Plans.

4. The Applicant is granted flexibility from the rear yard, open court width, lot occupancy, loading, and proportionality of affordable units requirements of the Zoning Regulations, consistent with the Plans and as discussed in the Development Incentives and Flexibility section of this Order.
5. The Applicant shall also have flexibility with the design of the PUD in the following areas:
 - (a) To be able to provide 85 residential units with a range of plus or minus 10%, so long as 30% of the total number of units are set aside as affordable units, and half of the affordable units are reserved for households earning up to 50% of the area median income (“AMI”) and half of the affordable units are reserved for households earning up to 80% of AMI, in accordance with the LDDA;
 - (b) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - (c) To vary the sustainable design features of the Project, provided the total number of LEED points achievable for the Project is not below the LEED-Gold rating standards under the United States Green Building Council LEED for New Construction v2009;
 - (d) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and any other changes in order to comply with all applicable District of Columbia laws and regulations or that are otherwise necessary to obtain a final building permit;
 - (e) In the retail and service areas, flexibility to vary the location and design of the ground floor components of the Project in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use and to accommodate any specific tenant requirements; and to vary the size of the retail area;

- (f) To vary the features, means and methods of achieving: (i) the required GAR of 0.3, and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control;
- (g) To vary the location, attributes and general design of the streetscape incorporated in the PUD to comply with the requirements of and the approval by the DDOT Public Space Division;
- (h) To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the Plans; and
- (i) To locate retail entrances in accordance with the needs of the retail tenants and vary the façades as necessary within the general design parameters proposed for the PUD and to vary the types of uses designated as “retail” use on the approved Plans to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)).

B. Public Benefits

1. **For the life of the Project**, the Applicant shall set aside 30% of the total units within the Project as affordable units. Half of the affordable units shall be reserved for households earning up to 50% of AMI and the other half of the affordable units shall be reserved for households earning up to 80% of AMI. The Applicant shall set aside the affordable units in accordance with the chart below:

Residential Unit Type	Floor Area/ % of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	77,276/100%	85				
Market Rate	58,881/76%	59				
Affordable Non-IZ	9,432/12%	13	Up to 80% AMI	Life of the Project	To be determined	15.3% of total units
Affordable Non-IZ	8,963/12%	13	Up to 50% AMI	Life of the Project	To be determined	15.3% of total units

All affordable units shall remain subject to the applicable rental or price controls for so long as the project is in existence. As noted, the Applicant intends to seek an exemption from the Inclusionary Zoning (“IZ”) regulations set forth in Subtitle

C, Chapter 10 of the Zoning Regulations, pursuant to 11-C DCMR § 1001.6. If the exemption is not granted, the Applicant shall nevertheless abide by the requirements of this condition, unless the IZ regulations impose more restrictive standards.

2. **Prior to issuance of a Certificate of Occupancy for the Project**, the Applicant shall demonstrate that the Project will achieve a minimum of 60 LEED points, which is equivalent to LEED-Gold certification under the United States Green Building Council LEED for New Construction v2009.
3. **During the operation of the Project**, the Applicant shall provide 23 parking spaces at the parking garage at CityMarket at O for the Church.
4. **During the operation of the Project**, the Applicant shall provide approximately 1,500 square feet of space in the Project for use by the Church.
5. **Prior to the issuance of a Certificate of Occupancy for the retail component of the Project**, the Applicant shall:
 - (a) Contribute \$100,000 to fund events and programs over a two-year period that promote retail and restaurant venues in the Shaw neighborhood; and
 - (b) Provide evidence to the Zoning Administrator that the events/programs that will be funded shall be documented in an agreement between the Applicant and a local organization and that the events and programs have either taken place or are scheduled to take place.
6. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall contribute \$25,000 to the Department of Parks and Recreation, which is to be utilized to enhance programming for youth activities at the Kennedy Recreation Center.

C. **Transportation Incentives**

1. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall widen a portion of the adjacent alley by five feet (from 10 feet to 15 feet) as shown on the Plans.
2. **For the first three years of operation of the Project**, the Applicant shall provide one annual Capital Bikeshare membership to the first resident(s) of each individual unit. This benefit shall be codified in the rental/condominium documents.
3. **During the operation of the building**, the Applicant shall provide a Transportation Management Program, as set forth in the TDM section of the

Comprehensive Transportation Review and as supplemented by the Applicant at the public hearing. (Ex. 24A.) The TDM Plan shall include the following:

- (a) The Applicant shall identify TDM Leaders (for planning, construction, and operations). The TDM Leaders shall work with residents and employees in the building to distribute and market various transportation alternatives and options;
- (b) The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials;
- (c) The Applicant shall unbundle parking costs from the price of lease or purchase of the Project's units;
- (d) The Applicant shall provide bicycle parking and storage facilities at the Property that meet or exceed Zoning Requirements. This shall include secure parking located on-site and short-term bicycle parking around the perimeter of the Property;
- (e) The Applicant shall provide six short-term bicycle spaces (three inverted U-racks), in the public space adjacent to the Property;
- (f) The Applicant shall install a transit information screen (electronic screen) within the residential lobby containing information related to local transportation alternatives;
- (g) The Applicant shall provide a bicycle repair station in the bicycle storage room; and
- (h) The Applicant shall provide updated contact information for the TDM Coordinator and report TDM efforts and amenities to goDCgo staff once per years.

D. Miscellaneous

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The PUD shall be valid for a period of two years from the effective date of this Order within which time an application shall be filed for a building permit. Construction must begin within three years of the effective date of this Order.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On May 25, 2017, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

On July 10, 2017, upon the motion of Commissioner May, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on November 10, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.

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