GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17402 of Karl H. Lass Family Trust, pursuant to 11 DCMR § 3103.2, for a variance from the residential recreation space requirement under §773, and a variance from the area and width requirements for a closed court under § 776, to allow an addition to an existing multiple dwelling in the C-2-C District at premises 1109 M Street, N.W. (Square 314, Lot 3).

HEARING DATE: December 20, 2005
DECISION DATE: January 10, 2006

DECISION AND ORDER

This application was submitted on July 20, 2005 by the Karl H. Lass Family Trust ("Applicant"), the owner of the property that is the subject of the application ("subject property"). The self-certified application requested variances from the residential recreation space and closed court requirements of the Zoning Regulations (§§ 773 and 776, respectively) in order to permit the Applicant to construct a four-story plus basement addition to an existing building, resulting in a building with 9 residential units.

The Board held and completed a hearing on the application on December 20, 2005, but left the record open for requested submissions. A decision meeting was set for January 10, 2006, at which time the Board deliberated on the application and granted it by a vote of 4-0-1.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated July 28, 2005, the Office of Zoning ("OZ") gave notice of the application to the District of Columbia Office of Planning ("OP"), the District of Columbia Department of Transportation, Advisory Neighborhood Commission ("ANC") 2F, the ANC within which the subject property is located, Single Member District 2F05, and the Council Member for Ward 2. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the D.C. Register and on October 6, 2005, mailed notice of the hearing to the Applicant, ANC 2F, and all owners of property within 200 feet of the subject property.

Requests for Party Status. The Saxa House Condominium Association ("opposition party"), representing residents of the adjacent building, Saxa House Condominium, was granted opposition party status. The opposition party stated that the addition proposed by

the Applicant would be, in essence, too close to its building, and would impair use of an existing side entrance to the Saxa Building by creating a narrow tunnel-like effect between the Saxa Building and the addition.

Applicant's Case. Mr. Karl H. Lass and his architect, Mr. Ron Schneck, testified on behalf of the application. Both discussed the project and the necessity for the relief requested. Both also refuted the allegations of the opposition party, particularly that the proposed addition would somehow impede access to the side door of the Saxa House Condominium building. In fact, Mr. Lass testified that in order to avoid this outcome, he has set back the first floor of his proposed addition, and even offered the residents of Saxa House an easement over his property.

Government Reports. The Office of Planning submitted a report dated December 6, 2005, recommending approval of the requested variances. OP opined that the subject property met the variance test and that, although the C-2-C zone district permits a height of 90 feet and a floor area ratio ("FAR") of 6.0, the Applicant's building would be less than 50 feet tall, with a FAR of only 3.2.

On September 22, 2005 the Historic Preservation Review Board ("HPRB") reviewed the Applicant's project because it is located in the Shaw Historic District. HPRB gave conceptual approval to the proposed addition, stating that it is compatible in height, massing, materials, and fenestration with the existing building.

ANC Report. ANC 2F submitted a July 12, 2005 letter to the Board indicating that, at a regularly scheduled and properly noticed meeting held on July 6, 2005, with a quorum present, the ANC voted unanimously to support the application.

FINDINGS OF FACT

The Subject Property and the Surrounding Area

1. The subject property is located on the north side of M Street, N.W., between 11th and 12th Streets, N.W., in Square 314, Lot 3. The property is zoned C-2-C and is located in the Shaw Historic District.

2. The subject property is a long rectangular lot with an area of 2,906 square feet, a width of 23.5 feet, and a length of 125 feet.

3. Directly behind the property is a 14.12-foot wide public alley, from which will be accessed 2 parking spaces to be provided by the Applicant.

4. The property is surrounded by a mix of uses, including 2- and 3-story row dwellings, several of which have been converted into condominiums, high-rise apartment buildings, several churches, and various commercial uses.

5. The subject property is currently improved with a now-vacant 3-story plus basement row dwelling, formerly housing 3 residential units and a dentist's office.

The Applicant's Proposed Project

6. The Applicant proposes to divide the existing building into 4 condominium units and to construct a 4-story plus basement rear addition to include 5 additional units, for a total of 9 residential units and approximately 9,220 square feet of residential space.

7. A 15-foot rear yard is required and provided, including 2 off-street parking spaces, but no side yards are required or provided. *See,* 11 DCMR §§ 774.1 and 775.5, respectively.

8. The proposed addition will be 46.5 feet high and will have a floor area ratio ("FAR") of approximately 3.2, slightly more than half the 6.0 FAR permitted in the C-2-C district.

9. The proposed addition will be attached to the existing building, but, as requested by the HPRB, and in order to permit light to enter the rear of the existing building and the front of the addition, an open area will remain between the building and the addition. A closed court is created, measuring 235 square feet in area and 12.5 feet in width, when the Zoning Regulations require a closed court of 672 square feet in area and a minimum of 15 feet in width. 11 DCMR §§ 776.3 and 776.4, respectively.

10. The deficiency of court width of approximately 5.8 feet is reduced to approximately 2 feet above a bay window which projects from the first and second floor at the rear of the existing building.

11. The project is providing 235 square feet of outdoor residential recreation space within the closed court area, but no indoor publicly-accessible recreation space. The Zoning Regulations, 11 DCMR § 773.3, require the proposed project to provide 1,383 square feet of residential recreation space, at least 50% of which, or 692 square feet, must be outdoors.

12. The property is long and relatively narrow, and other than the adjacent lot, is the only lot in the Square with such dimensions. Several other lots in the Square and adjacent Squares are much wider and are improved with apartment houses.

13. The existing building is 46 feet high and occupies approximately 37% of the lot.

14. Because the existing building is located in an historic district, the project is subject to the historic preservation review process. On September 22, 2005, HPRB conceptually approved the project as compatible with the historic district after the Applicant made adjustments to the design to meet historic preservation concerns.[1]

15. The HPRB staff recommended reducing the height, massing, and setback of the addition, and favored the creation of an open space between the addition and the main house: the HPRB conceptual approval limited the height of the addition to within a foot of the height of the existing row house, or 39 feet.(*See* Historic Preservation Review Board Staff Report and Recommendations, July 28, 2005 and September 22, 2005, Exhibit No. 25, Attachment D, and Transcript of Public Hearing, December 20, 2005 at 92-93.)

Practical difficulty with respect to residential recreation space

16. The only potential space for outdoor residential recreation is in the rear yard.

17. Applicant would have to forfeit the two (2) proposed parking spaces to provide residential recreation space in the rear yard.

18. The parking spaces are provided to meet anticipated needs of the building's tenants.

19. Any outdoor rooftop recreation space would have to have a minimum dimension of 25 feet on each side, (11 DCMR § 773.7) and, with the property's width at 23.25 feet, this is impossible to accommodate.

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[1] HPRB regulations provide that applications to alter an historic building must retain and enhance those properties which contribute to the character of the historic district and encourage their adaptation for current use; and assure that alterations of existing structures are compatible with the character of the historic district. 10A DCMR § 2000.4.The Mayor may not approve a permit to alter a structure in an historic district until a recommendation is made by the HPRB that the alteration is compatible with the character of the historic district. *See* 10A DCMR § 2000.4. Conceptual design review allows an applicant "to benefit from the guidance of the Review Board …in advance of a permit application and to allow the Board…to review and take action at an early stage of design.." 10A DCMR § 301.2.

20. Due to the relatively narrow street frontage of the property, the Applicant cannot provide any lobby area to attempt to comply with the indoor recreation space requirement.

21. In order to comply with the indoor recreation space requirements, the Applicant would have to convert one of the residential units to recreation space, increasing the cost of each of the remaining units by approximately 12.5%.

22. The residential recreation space requirement – cannot be met without reducing the number and size of the dwelling units to the point where the project is no longer feasible.

Practical difficulty with respect to closed court

23. Providing a closed court of the size required by the Zoning Regulations would cut the footprint of the proposed addition by approximately one-third, or approximately 370 square feet.

24. A 370-foot reduction in the size of each floor would result in a loss of approximately 1,850 square feet, or 20% of total residential square footage.

25. The bay window projects 3.75 feet from the rear of the existing building to the top of the second floor window and cannot be removed or altered, further compounding the difficulty of enlarging the area or width of the closed court.

26. The closed court size requirements cannot be met without reducing the number and size of the dwelling units to the point where the project is no longer feasible.

No substantial detriment to public good or zone plan

27. The Applicant's residential project is compatible with its neighboring buildings.

28. The project is designed to be, and is, harmonious with the surrounding neighborhood and is much smaller than the matter-of-right development allowed in the C-2-C zone.

29. There are ample opportunities in the surrounding community for both indoor and outdoor recreation. Located nearby are Logan Circle, Samuel Gompers Park, Mount Vernon Square, Franklin Square, Thomas Circle, the Thomson School Playground, and numerous shops and restaurants.

30. Even at a somewhat reduced size, the closed court will provide some outdoor recreation space. At its smallest, it is 12 feet by 17 feet, and will be designed for outdoor passive recreation use, with decorative lighting, benches, and plants.

31. The closed court is located behind the existing building and is largely hidden from public view.

CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property … or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any Zoning Regulation would "result in particular 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) (2001), 11 DCMR § 3103.2. The "exceptional situation or condition" of a property can 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). Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2.

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

The subject property is affected by exceptional conditions which meet the first prong of the variance test. It is long and narrow and approximately 37% of the property is occupied with the existing building, which is bounded on both sides by adjacent attached buildings. By virtue of the property's location in, and contribution to, the Shaw Historic District, alterations to it must be compatible with the nature of the historic district. D.C. Official Code § 6-1101(b)(1)(B) (2001). To ensure such compatibility, the staff of the Historic Preservation Office (HPO) requested that the height of the rear addition be approximately the same as that of the existing building and that the addition be pulled back sufficiently from the original house. Accordingly, the size of the addition was reduced to one significantly smaller than would be allowed as a matter-of-right in this C-2-C district.

The long, narrow shape of the property and the adjustments made in response to HPRB's concern over the impact of the addition to the contributing properties of the existing

building result in practical difficulties to the Applicant by restricting his ability to provide the required residential recreation space and closed court dimensions in conformity with the Zoning Regulations. In order to comply with the indoor recreation space requirement, the Applicant would lose an entire residential unit. It is impossible for the project to provide rooftop recreation space without a variance as it cannot meet the Zoning Regulation's requirement of a 25-foot length on each side. The dimensions of the Applicant's building do not even approach those permitted in the C-2-C district, therefore, the amount of square footage of residential recreation space required in a C-2-C district, based as it is on a matter-of-right building, is out of proportion in this case. The only outdoor space that is potentially available for residential recreation space is the rear yard. However, the rear yard is being devoted to 2 parking spots which are intended to meet the needs of the building's tenants. The Applicant is attempting to meet the spirit of the regulation by providing some outdoor recreation space in the closed court area, however, due to the existing building, and, particularly its rear bay window, which cannot be removed, the closed court size is less than that required by the Zoning Regulations.

The last prong of the variance test is no impairment of the public good or of the intent or integrity of the Zone Plan and Regulations. The Board concludes that the Applicant's project meets this prong. It is a residential use in a mixed-use neighborhood and is compatible with adjacent and surrounding uses. The smaller-than-required closed court cannot be seen from the street and has little or no effect on the public good or the Zone Plan. Moreover, the Board concludes that the provision of 2 parking spaces for the property enhances the public good by removing 2 vehicles from on-street parking spaces, and therefore making them available to others. The Board concludes that the availability of, public outdoor recreation space in the neighborhood mitigates Applicant's inability to provide the full amount of residential recreation space.

Neither the reduced residential recreation space nor the reduced size of the closed court has any significant effect on the Saxa House Condominium or its residents. The closed court is not located on the side of the subject property adjacent to the Saxa House, but on the opposite side, and therefore, has no real effect on the residents of Saxa House.

The opposition party was particularly concerned that the placement of the proposed addition would impede access to its side building entrance. This side entrance is itself accessed by a basement staircase shared by Saxa House and the Applicant because it straddles the property line between them. The Applicant, however, has attempted to avoid impeding access to the Saxa House side entrance by setting back the first floor of the addition abutting the side entrance, and building the second floor to the property line. A second-story overhang is created with an open area beneath it, thereby allowing easier access to the Saxa House side entrance. As a matter-of-right, the Applicant could have built the first floor to the property line as well, but has refrained from doing so in order to

accommodate the residents of Saxa House. In fact, the Applicant has gone so far as to offer the residents of Saxa House an easement over his property to facilitate their access.

The opposition party was also concerned about window placement, which is not a zoning issue, and rooftop placement of the HVAC units on the subject property. These units, however, are less than 4 feet in height; therefore their placement is not governed by the Zoning Regulations. 11 DCMR § 411.17.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. Both OP and ANC 2F recommended approval of the 2 variances requested here, and the Board agrees with their recommendations.

Based upon the record before the Board, and pursuant to 11 DCMR § 3125.8, the Board grants the Applicant the flexibility to modify the plans approved by the Board to conform to the final plans approved by the Historic Preservation Review Board and staff. This flexibility is granted only to the extent that the plans resulting from it are in compliance with the relief granted herein and with the Zoning Regulations.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a variance from the residential recreation space requirement under § 773 and a variance from the area and width requirements for a closed court under § 776. Accordingly, it is therefore **ORDERED** that the application be **GRANTED.**

Vote: 4-0-1 (Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and Michael G. Turnbull, to approve. Geoffrey H. Griffis, having recused himself, not participating and not voting).

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: AUG 07 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 17402

As Director of the Office of Zoning, I hereby certify and attest that on **AUGUST 7, 2006**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY: _____
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