GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17420 of 11 23 11, LLC, pursuant to § 3103.2, for a variance from the lot occupancy requirements under § 403, and a variance from the rear yard requirements under § 404, to allow an eight story rear addition to an existing building to be used for nonprofit office and residential apartment use in the DD/R-5-E district, at premise 1123 11th Street, N.W. (Square 341, Lot 807).

HEARING DATE: February 7, 2006
DECISION DATES: February 21, 2006, March 7, 2006, and April 4, 2006

DECISION AND ORDER

This application was submitted on August 22, 2005, by 11 23 11, LLC, ("Applicant"), the owner of the property which is the subject of the application ("subject property"). The self-certified application requested variance relief from applicable lot occupancy and rear yard requirements in order to permit construction of an 8-story rear addition to an existing 3-story building.

The Board of Zoning Adjustment ("Board") held a hearing on the application on February 7, 2006, but kept the record open for more information, setting a decision date for February 21, 2006. This date was postponed to March 7, 2006 at the Applicant's request. On March 7, 2006, the Board decided it needed still more information, and deferred the decision until April 4, 2006, at which time the Board voted 3-2-0 to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memorandum dated August 24, 2005, the Office of Zoning ("OZ") gave notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation, the Councilmember for Ward 2, Advisory Neighborhood Commission ("ANC") 2F, the ANC within which the subject property is located, and the Single Member District member for 2F06. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the hearing in the *District of Columbia Register* and on November 15, 2005, mailed such notice to the Applicant, ANC 2F, and all owners of property within 200 feet of the subject property.

Requests for Party Status. Mildred Chisholm, a neighbor whose property fronts on 10th Street, N.W., represented by her son, Ken Chisholm, requested, and was granted, party status. Ms. Chisholm and her son were concerned that the sunlight to her rear yard would be diminished by the project proposed by the Applicant, thereby negatively affecting the plant growth in, and her ability to enjoy, her rear yard.

Applicant's Case. The project architect presented the Applicant's case and explained how the subject property and the proposed project met the variance test. He discussed the uniqueness of the property and how this caused practical difficulties in adhering to the Zoning Regulations. He also stated that any effect on sunlight would be minimal, and that most of the shadows cast on nearby properties were due to the 90-foot building already constructed to the south of the subject property.

Government Reports. The Office of Planning submitted a report to the BZA dated January 24, 2006 recommending approval of both variance requests. OP opined that the subject property is unique by virtue of its narrow width and small size, and the existence of the historic building on the lot. OP also felt that the Applicant would suffer practical difficulties in meeting the lot occupancy and rear yard requirements and that the project would not result in a substantial detriment to the public good or in a substantial impairment of the Zoning Regulations or Map. Further, at the hearing, the OP representative stated that any sunlight blockage by this project would be minimal.

The Historic Preservation Review Board ("HPRB") gave a final recommendation of approval to the project as being compatible with the Shaw Historic District on February 24, 2005. Also, at the request of the Board's staff, the HPRB staff filed with the Board a post-hearing memorandum explaining and reiterating the need for the approximately 37-foot setback of the addition.

ANC Report. ANC 2F, in a report setting forth the minutes of its regularly-scheduled and properly-noticed meeting of December 7, 2005, indicated that it voted unanimously to recommend approval of both variances requested.

FINDINGS OF FACT

The subject property and the surrounding neighborhood

1. The subject property is located at 1123 11th Street, N.W., in Square 341, Lot 807, in an R-5-E zone district, the Downtown Development Overlay District, and the Shaw Historic District.

2. The property is rectangular in shape, with a width of 25 feet and a length of 100 feet, for an area of 2500 square feet.

3. The property is improved with a 3-story Queen Anne-style brick row house, built in 1888, with a 2-story rear addition. The building was formerly used as office space, but has been vacant for the last one and one-half years. It has been designated as a contributing building to the Shaw Historic District.

4. A 6-foot wide public alley dead-ends at approximately the center of the rear lot line of the subject property. The alley is inaccessible by vehicles and is used for foot travel.

5. Surrounding the subject property are row dwellings and several large (6- to 9-story) multi-family dwellings. Immediately adjacent to the south of the subject row house is a 9-story multi-unit condominium building, and immediately adjacent to the north, another 9-story multi-unit residential building is to be constructed on what is currently a vacant lot.

The proposed project

6. The Applicant proposes to retain and renovate the existing building, but to demolish its existing 2-story rear addition and replace it with a larger 8-story plus basement addition.

7. The new 8-story addition will accommodate 5 residential condominium units and 2 commercial spaces.[1]

8. Because the project is in an historic district, it is subject to HPRB review. *See,* D.C. Official Code § 6-1105 (2001).

9. HPRB was opposed to the Applicant's original design, which placed a new fourth and fifth floor on top of the existing building, with a 20-foot, and a 30-foot setback, respectively, from the front of the existing building. HPRB would not approve a design which placed new construction on top of the existing building.

10. In order to obtain HPRB's final recommendation of approval for the project, the Applicant had to remove all new construction from the top of the existing building and place it behind the existing building's rear wall, setting back the entire addition approximately 37 feet from the front of the existing building.

11. The addition will extend 51 feet back from the rear of the existing building, leaving a 12-foot rear yard, when a rear yard of 20.75 feet is required. *See,* 11 DCMR § 404.1.

[1]There is an existing Certificate of Occupancy for non-profit office use within the building, which was issued pursuant to Board of Zoning Adjustment Order No. 14973 of Progressive Life, Inc., dated February 3, 1989.

12. The rear yard will be landscaped for the use of the residents.

13. The proposed addition will increase the lot occupancy of the building from approximately 54% to 88%, above the permitted maximum of 75%. *See*, 11 DCMR § 403.2.

14. In order to build the addition in conformance with the Fair Housing Act, the Applicant is providing accessible bathrooms, resulting in a larger proportion of the square footage being devoted to bathrooms.

The variance test

Extraordinary situation or condition

15. The subject property is very small and has a particularly narrow lot width and street frontage as a result of recent consolidations of other lots in the Square to allow for the construction of large apartment buildings.

16. The lot to the north of the subject property is almost 3 times its size, and the lot to the south is even larger.

17. The small size of the lot limits its buildable area.

18. The existing building cannot be altered without an affirmative recommendation from HPRB, and further limits, by approximately 50%, the area available for the footprint of new construction.

19. HPRB's refusal to permit new construction on top of the existing building, resulting in a large, 37-foot setback, further reduces the buildable area available on the subject property.

The practical difficulties

20. Due to HPRB's request that no new construction be placed atop the existing building, all the residential and commercial space, as well as the core areas, must be accommodated within the rear addition, forcing the Applicant to push the new construction further toward the rear of the lot, and resulting in the project's inability to meet both the maximum 75% lot occupancy requirement and the 20.75 foot rear yard requirement.

21. If the project complied with the 20.75-foot rear yard requirement, the building would have a much smaller footprint, resulting in approximately 35 – 40% of each floor

being devoted to the two stairwells and the elevator core, with a concomitant loss of residential square footage.

22. Due to HPRB's constraints, the Applicant cannot make up for this loss of residential square footage by building on top of the existing building.

23. With the variance relief allowing a larger building footprint, the core area is reduced to approximately 26% of each floor, permitting the Applicant to recapture some of the otherwise lost residential square footage.

24. An average size core area for a multi-family building of this size is between 15 and 20% of each floor.

25. A somewhat reduced rear yard also permits the rear of the addition to extend beyond the rear wall of the 9-story building to the south, allowing increased light and air to reach the units in the addition.

No impairment of public good or of Zoning Regulations or Map

26. R-5-E zones allow a relatively high height and medium-high density, with which this project, with the requested variance relief, is in accord. 11 DCMR §350.2.

27. The DD Overlay seeks to create a "balanced mixture of uses." 11DCMR § 1700.3(a). The Applicant's project furthers this goal by providing both a residential component and two commercial spaces.

28. The 8-story addition will have only a minimal effect on the sunlight reaching nearby properties and any such effect is not due to the increased lot occupancy or encroachment into the required rear yard, but due to the height, which is within the matter-of-right height limit of 90 feet. *See,* 11 DCMR § 400.1.

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 the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or 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), 11 DCMR § 3103.2.

An applicant for area variances 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. The property is uniquely small and narrow for the neighborhood and is a contributing building. Any effort to increase the size of the building would trigger review by the Historic Preservation Review Board. The Applicant's initial design had proposed to place part of the addition on top of the existing building, but this was changed at the insistence of HPRB. To accommodate historic preservation standards and receive HPRB's final recommendation of approval, the entire addition was pushed behind the rear wall of the existing building, with a setback of approximately 37 feet from its façade.

Once new construction was disallowed on top of the existing building, the Applicant faced a loss of residential square footage unless it could increase the footprint of the addition or increase its height. The Applicant has opted to increase the footprint of the addition, resulting in the need for the two variances requested. The greater footprint of the addition cannot be spread to the side, and so is pushed into the rear yard. The 12-foot rear yard provided meets the minimum requirement for rear yards in this R-5-E zone, but the regulation states that after the 12-foot minimum, a rear yard must extend to a distance equal to 3 inches per foot of vertical height of the building. 11 DCMR § 404.1. With a height of approximately 84 feet, the strict application of the Zoning Regulation would require a rear yard of approximately 20.75 feet, an amount of space which is unavailable on the subject property because of its small size and the fact that all new construction has been pushed behind the existing building.

Removing any new construction from on top of the existing building also means that all residential, commercial, and core areas for both stairwells and the elevator, have to be fitted into the rear addition. However, approximately one-half of the lot is already occupied by the existing building. Therefore, in order to accommodate all the new construction behind the existing building and maintain a reasonable proportion of core

area to useable space on each floor, the Applicant needs to increase the lot occupancy on the lot beyond the 75% permitted in the R-5-E zone district. The new construction is also providing handicapped-accessible bathrooms, which require more square footage than non-accessible bathrooms. This factor also results in a need to expand the lot occupancy beyond that permitted in order to provide accessible bathrooms and still provide sufficient other useable space.

The Board concludes that the application meets the first two prongs of the variance test. The property is unique and this uniqueness, particularly the existence of the historic building and its treatment by HPRB, causes practical difficulties for the Applicant. The Board consistently gives deference to HPRB's historic design recommendations. In this particular case, the Board disagreed with HPRB's recommendation that the proposed addition be set back from the street edge and found no logical basis for their direction. However, a majority of the Board found that there was additional persuasive evidence of practical difficulty; such that, the application could be supported.

As for the third prong of the test, the Board concludes that it is also met. This project causes no detriment to the public good, nor does it impair the intent or integrity of the Zoning Regulations or Map. In fact, the Applicant's renovation of the historic building and its sensitivity to designing around the building enhance the public good. Also, permitting the addition to extend into the required rear yard actually permits more light and air to reach the units in the addition by allowing it to extend beyond the rear wall of the adjacent 9-story building. Although a rear neighbor opposed the project due to fears of reduced sunlight in his rear yard, it appears that the sunlight reduction will be minimal, and any matter-of-right height building in this R-5-E zone would have a similar impact.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of 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 two variances requested, and the Board agrees with their recommendations.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application for a variance from the lot occupancy requirement of § 403 and a variance from the rear yard requirement of § 404. Accordingly, it is therefore **ORDERED** that the application be **GRANTED.**

VOTE: **3-2-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., and Gregory N. Jeffries to grant; Ruthanne G. Miller and John A. Mann II to deny)

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

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

FINAL DATE OF ORDER: NOV 29 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.

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.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 17420

As Director of the Office of Zoning, I hereby certify and attest that on **NOVEMBER 29, 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:

Carolyn Brown, Esquire
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006

Kendall Dorman
11 23 11, LLC
1711 Connecticut Avenue, N.W.
Washington, D.C. 20009

Mildred Chisolm
1128 10th Street, N.W.
Washington, D.C. 20001

Chairperson
Advisory Neighborhood Commission 2F
5 Thomas Circle, N.W.
Washington, D.C. 20005

Single Member District Commissioner 2F06
Advisory Neighborhood Commission 2F
5 Thomas Circle, N.W.
Washington, D.C. 20005

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

Councilmember Jack Evans
Ward Two
1350 Pennsylvania Avenue, N.W., Suite 106
Washington, D.C. 20004

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

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

Jill Stern
General Counsel
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR