GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17495 of Douglas George Jefferies, pursuant to 11 DCMR § 3102.2, for a variance from the penthouse set-back provisions under subsection 400.7(b), a variance from the lot area requirements under section 401, a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, a variance from the side yard requirements under section 405, a variance from the open court requirements under section 406, a variance from the nonconforming structure provisions under subsection 2001.3, and a variance from the alley structure height provisions under subsection 2507.4, to allow the conversion of two existing single-family dwellings into one single-family dwelling in the R-3 District at premises 1520 22nd Street, N.W. and 2210 Q Street, N.W. (Square 2510, Lots 806 and 813).

Note: The Board revised the application by removing the request for variance relief from §2507.2, the alley width provisions. The Board determined that relief from this provision was unnecessary.

HEARING DATE: July 18, 2006
DECISION DATE: July 18, 2006 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

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) 2D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2D, which is automatically a party to this application. ANC 2D submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of most of the variances requested in the application. However, OP recommended denial of the variances from the height, rear yard and side yard requirements.

OP opined that the additional 8 feet of height requested over the maximum height permitted in the zone district would be detrimental to the Zone Plan because the height limitation for alley structures is designed to keep them lower than the structures that front on the streets. OP noted that the existing adjacent buildings already have second floor additions and to add a third story will be unusual for alley dwellings. Finally, on this point, OP stated that "The additional height, combined with the setback relief results in a building mass which is larger [than] that anticipated for alley dwellings." In OP's view, the application failed to demonstrate a hardship with regard to the height variance.

The Board is authorized to grant a variance from the strict application of the Zoning Regulations in order 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 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) (2001), 11 DCMR § 3103.2. 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." *Id.*

In examining the evidence of record, the Board determined that there are a number of factors that are unique to the property. These include the buildings' status as historic structures on an alley and the setback limitations placed on the construction by the Historic Preservation Review Board.

In assessing the second prong of the variance test, the Board gave great weight to the opinion of OP, and carefully considered and addressed its views in this regard. However, the Board determined that OP applied the wrong standard in reviewing the application. It is the "practical difficulty" standard, rather than the "hardship" standard that applies in area variance applications. The Board noted several practical difficulties in complying with the regulations that arose out of the uniqueness of the property.

The Board noted the ramifications of designing a building within the height limitations. To do so, the floors of one of the existing buildings would need to be reduced, everything would need to be reframed and a flat roof created, resulting in a structure that would be more architecturally out of character with the surrounding neighborhood and the existing house.

The Board noted that even with the third floor addition, the structure would not be as tall as other nearby structures. Furthermore, the addition would not be visible from the street.

The Board determined that it would be a practical difficulty for the applicant to reduce the height by not constructing the two-car garage for parking. Without the garage, the applicant would need to park in the alley; with the garage, he can park on the subject property. Also, the Board noted that if the garage with the extra level above is not built, the appraisal might be inadequate for the applicant to secure a loan.

With regard to the elevator, the Board concluded that the HPRB's setback recommendation placed a dimensional constraint on the location of the elevator unit, requiring the applicant to relocate the penthouse. Therefore, due to historic preservation concerns, the elevator cannot be placed where it would normally be located, necessitating the variance from the roof structure setback provisions.

The Board concludes that a confluence of these exceptional circumstances creates practical difficulties for the applicant in his efforts to renovate the properties in compliance with the Zoning Regulations. Further, the Board finds that variance relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. While OP was of the view that a taller structure would be out of character with other alley dwellings in general, there are no other alley dwellings on this alley. The building on this property will not be out of character with the taller buildings behind it.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3102.2, for variances from §§ 2001, 401, 404, 405, 403, 406, 400 and 2507. 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 ANC and the Office of Planning reports filed in this case, the Board concludes that the applicant has met the burden of proof under 11 DCMR §§ 3103.2, *(*2001, 401, 404, 405, 403, 406, 400 and 2507*)* that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the applicant 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 § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED.**

VOTE: **4-0-1** (Curtis L. Etherly, Jr., Ruthanne G. Miller, Geoffrey H. Griffis and John A. Mann II to grant; Carol J. Mitten not present, not voting)

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

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

FINAL DATE OF ORDER: OCT 05 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

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.

TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 17495

As Director of the Office of Zoning, I hereby certify and attest that on **OCTOBER 5, 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:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR