Statement of the Capitol Hill Restoration Society
Before the Board of Zoning Adjustment
April 5, 2000

Rec'd.
APR - 5 2000

BZA No. 16547
521 7th Street, SE

The Zoning Committee of the Capitol Hill Restoration considered this application on February 3, 2000 and voted unanimously to support the application for a variance to construct an addition to the rear of an existing dwelling. Under standing orders of the Society's Board of Directors, the position of the Committee becomes the position of the Society.

The Capitol Hill Restoration Society is a civic association with more than 900 members. The interest area of the Society as defined by the Society's Bylaws included the subject premises.

The rear addition that is sought is small: the resulting lot occupancy would be 61.91 percent, less than two percent over the allowable 60 percent. The report from the Zoning Review Branch dated November 23, 1999 indicates that two variances are required: (1) from Section 2001 for an addition to an existing non-conforming building and (2) from Section 403.2, the allowable percentage of lot occupancy.

**Minor area variances**

Two years ago the Zoning Commission added two new sections to the Zoning Regulations to deal with minor area variances. The Commission stated:

> The purposes of the amendments are to provide a legal basis for making reasonable additions to single-family dwellings where the strict tests associated with an area variance are unattainable and to authorize the Zoning Administrator to allow very minor, "de minimus" deviations from the area standards of the zone districts. Zoning Commission Order No. 840, District of Columbia Register, March 13, 1998.

The two new sections (223 and 407) that were added to the Zoning Regulations by Order No. 840 have worked well in our experience. Section 407, which is particularly relevant in this application, allows the Zoning Administrator to waive deviations in lot occupancy of up to two percent. However, Section 407 cannot be applied here because variances from the requirements for additions to non-conforming structures are involved. If the only variance required was from Section 403, a waiver could be granted under the provisions of Section 407. We believe that Section 407 should be expanded to include area variances from Section 2001 and we will ask the Zoning Commission to include such an amendment in the next round of miscellaneous text amendments.

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**Remand**

The applicant has uncovered clear and convincing evidence that this building was made non-conforming as a result of action by the city. Evidence indicates that the footprint of the building has been unchanged since the 1960's. Therefore, subdivision of the property in the late 1970's created a substandard rear yard of 17.5 feet instead of the 20 feet required. We do not believe that city, having allowed creation of a non-conforming structure, can now hold the applicant to strict requirements that apply to those structures.

We recommend that the Board remand this application to the Building Administrator with instructions to treat the building as if it were conforming. Because of the "de minimus" extent of the deviation from allowable lot occupancy, the Zoning Administrator can waive the deviation and the building permit can issue.

Lyle R. Schauer
Zoning Chair