GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16550 of Stacy Hamblen, pursuant to 11 DCMR § 3103.2, for a variance from Subsection 2507.2 to allow the subdivision and construction of ten one-family row dwellings in an R-4 District on an alley lot that does not abut an alley 30 feet or more in width and has from the alley access to a street through an alley or alleys not less than 30 feet in width at Rear-1406 through 1424 Webster Street, N.W. (Square 2699, Lot 64).

HEARING DATES: February 16, 2000; June 7, 2000; November 8, 2000

DECISION DATE: November 8, 2000

DECISION AND ORDER

Stacy C. Hamblen, the owner of the subject property, filed an application with the Board of Zoning Adjustment on December 22, 1999, pursuant to 11 DCMR § 3103.2, for a variance from 11 DCMR § 2507.2 to permit the subdivision of an alley lot for the construction of ten one-family dwellings. Subsection 2507.2 limits such construction to those alley lots abutting an alley that is at least 30 feet in width and that also have access to a public street through an alley at least 30 feet wide. The application is accompanied by a memorandum from the Zoning Administrator certifying the required zoning relief. Mr. Hamblen is represented in these proceedings by Klaus Klatt, architect planner. For the reasons stated below, the application is denied.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing; Continuances. By memoranda dated December 28, 1999, the Office of Zoning advised the D.C. Office of Planning and Advisory Neighborhood Commission (ANC) 4C, the ANC for the area within which the property is located, of the application.

The Board scheduled a hearing for February 16, 2000. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on January 6, 2000, mailed the applicant, the owners of all property within 200 feet of the subject property, and ANC 4C notice of hearing. Notice of hearing was also published in the *D.C. Register* on January 7, 2000, at 47 DCR 31. The applicant's affidavit of posting indicates that on February 2, 2000, four zoning posters were placed on each corner of subject property, in plain view of the public.

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Immediately after the hearing date was set, Mr. Klatt endeavored to secure a continuance. Mr. Klatt's first request, dated January 7, 2000, indicates that he had a previous commitment for February 16th. Ex. 24. On January 12, 2000, Mr. Klatt faxed the Office of Zoning another letter requesting a continuance due to his previous commitment and also due to the need to reschedule a January 12th ANC meeting concerning the application. Ex. 22. He also filed a copy of the January 7th letter on February 1, 2000, with an annotation that he would be out of the country until February 20th. Ex. 25.

When the public hearing commenced on February 16th, neither the applicant nor his representative was present. Many neighborhood residents were present, along with an ANC commissioner. The Board dismissed the application at the ANC's request, since the applicant had met with both the 16th Street Neighborhood Association and the ANC after filing his continuance requests and had failed to advise either entity of the requests. *See* Ex. 50. On April 14, 2000, the Board issued a written order dismissing the application. Exs. 46, 50.

On April 21, 2000, the applicant wrote to the Board protesting the dismissal. Ex. 48. The letter was treated as a request for reconsideration or rehearing, and placed on the Board's June 7, 2000, public meeting agenda. Ex. 49. At the public meeting, the Board reinstated the application due to misunderstanding between the applicant and the community. The Board then scheduled the application for hearing on October 3, 2000. The Office of Zoning mailed a notice of the October 3, 2000, hearing to the applicant, the owners of all property within 200 feet of the subject property, and ANC 4C. Exs. 54-57. Notice of the hearing was published in the *D.C. Register* on August 11, 2000, at 47 DCR 6444.

On September 2, 2000, the applicant requested a continuance of the hearing to October 24, 2000. Ex. 59. The applicant also submitted a letter dated October 12, 2000, requesting a continuance to November 8th, to allow additional time to meet with public agencies. Ex. 59. Meanwhile, on September 26th, the Office of Zoning scheduled a hearing on the application for November 8th, notifying the applicant, the owners of all properties within 200 feet, and ANC 4C in writing of the new hearing date. Exs. 61-64. Notice of the November 8, 2000, public hearing was published in the *D.C. Register* on September 29, 2000, at 47 DCR 7928.

On November 8, 2000, the applicant again sought a continuance, ostensibly at the request of an ANC commissioner. The Board continued the hearing to February 2001; however, immediately thereafter, the applicant sought to rescind his request, which was based on a misunderstanding of the ANC commissioner's position. The Board vacated the continuance and proceeded to hear the case.

Applicant's Case. The applicant submitted a written statement and supporting materials together with his application. At the November 8, 2000, hearing, Mr. Klatt testified in support of the application.

D.C. Office of Planning (OP) Report. OP submitted a report dated November 1, 2000, Ex. 71, recommending that the application be denied. OP found that the applicant had not demonstrated that the subject property is unique or that he would encounter practical difficulties in using the property in accordance with the Zoning Regulations. OP determined that the

proposed project would not further the housing policies expressed in the Ward 4 Element of the Comprehensive Plan, which calls for the protection and preservation of existing, established neighborhoods. Finally, at page 4 of its report, OP stated that there would be "clear negative impacts on the public good, relating to urban design, circulation patterns and public safety; and, will harm to the integrity of the zoning plan."

ANC Report. ANC 4C filed a report dated February 9, 2000, indicating that at a duly noticed meeting, with a quorum present, the ANC voted to recommend that the application be denied. The ANC resolution states that the requested variance would greatly diminish the already limited number of parking spaces available to the neighborhood, bring incompatible housing to the neighborhood, decrease property values, increase density beyond that which would allow comfortable living, and likely prevent the provision of public works and emergency services to the residents. Exs. 31, 35, 70.

Persons in Support of the Application. The Board did not receive any comments in support of the application.

Persons in Opposition to the Application. The Board received a number of letters in opposition to the application. In general, these letters cited concerns that fire and trash trucks would not be able to access the proposed townhouses through the narrow alleys. They also expressed concern that the number and location of the proposed townhouses would result in increased traffic in the alleys, exacerbate existing parking problems, and adversely affect neighboring properties through increased noise, loss of views and privacy, and the removal of trees and open space. Many adjacent property owners viewed the proposed townhouse design and construction as incompatible with the character of their homes. They worried that with their location and orientation, facing the back yards of existing dwellings, the proposed townhouses might remain vacant, attract drug users and vagrants, and lead to urban blight and a reduction in property values. Several persons encouraged the applicant to consider other options, including use of the lot for parking and sale to the District of Columbia Government for community gardens or a park.

Decision. Following the public hearing on November 8, 2000, the Board voted 3 to 0 to deny the application.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The property that is the subject of this application is located at the rear of 1406 through 1424 Webster Street, N.W. (Square 2699, Lot 64), between 14th and 15th Streets, and northwest of the intersection of 14th Street and Arkansas Avenue. It is in an R-4 Zone District.

2. The lot is rectangular in shape, 203 feet long and 90.6 feet wide. It is 18,392 square feet in size, and presently unimproved.

3. The lot is located in the middle of Square 2699. All four sides of the lot abut, along their entire length, 16-foot wide improved public alleys. The lot, which has no street frontage, is an "alley lot" as defined in 11 DCMR § 199.1.

4. The lot has access to public streets via four improved alleys: two alleys, one 16 feet wide and the other 10 feet wide, lead to 15th Street; one alley, 10 feet wide, leads to Webster Street; and one alley, five feet wide, leads to Arkansas Avenue.

5. The lot is surrounded on all four sides by improved townhouse lots fronting on the 1400 blocks of Webster and Varnum Streets and the 3800 blocks of 14th and 15th Streets. It is within an established residential neighborhood developed with one-family row dwellings. Roosevelt Senior High School and Recreation Center are located east of 14th Street and Arkansas Avenue. The Washington Metropolitan Area Transit Authority Bus Barn is located two blocks north on 14th Street. There are small-scale commercial uses along 14th Street across from the Bus Barn.

6. The applicant purchased the property at a tax sale in 1992. Ex. 4. He states that since that time, he has cleaned the lot from frequently abandoned vehicles, decaying and bulky debris, weeds, and fallen tree limbs. According to his application, he "has endured frequent confrontations with persons who defied his orders to vacate the premises, be it vagrants building a temporary domicile/shelter, from parties, often accompanied by illegal barbeques/fires and loud music, the storage of firewood and furniture by the adjoining property owners, [and] by the creation of temporary gardens by others." Ex. 4. The applicant also complains that despite the property's $5035 purchase price, he pays property taxes on its assessed value, $64,372 according to the 1998 tax assessment. *See* Ex. 6.

7. The applicant's photographs show that the property is presently used for the parking of numerous cars. Exs. 3, 38. An adjacent property owner states that the lot currently provides parking for 27 to 30 cars. Ex. 40.

The Proposed Project

8. The applicant proposes to subdivide the property into ten lots of varying widths, each with a minimum lot size of 1800 square feet, and to construct a one-family row dwelling on each lot. The dwellings would be 1,520 square feet, two-story townhouses, with three bedrooms and two and one-half baths. The applicant would provide one on-site parking space for each dwelling.

Unique or Exceptional Conditions of the Property

9. The applicant failed to provide the Board with any evidence to show that the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property.

Practical Difficulty

10. The applicant did not provide the Board with any evidence that would show that the strict application of the Zoning Regulations would result in practical difficulties or that it would be unnecessarily burdensome.

Public Detriment

11. Due to the narrowness of the alleys, fire trucks and other large vehicles may have difficulty accessing the proposed townhouses. The inability to access the townhouses in an emergency would present a public health and safety hazard, not only to their occupants but also to the adjacent property owners.

12. Trash and recycling trucks currently have difficulty negotiating the narrow alleys. The proposed development, which would add traffic to the alleys, would exacerbate this problem.

13. The adjacent property owners rely upon the alleys for access to the rear of their properties and parking. The introduction of ten new townhouses would add traffic to the alleys, adversely affecting the alley access and parking enjoyed by existing residents.

14. Since the subject property is completely surrounded by alleys, the front yard of each proposed dwelling would face the rear yards of existing dwellings, a configuration that is undesirable with respect to both urban design and marketability. The introduction of such housing into the middle of the square could lower the value of adjacent properties and destabilize the square.

Impairment of the Zoning Regulations and Map

15. As stated in 11 DCMR § 330.1, "The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) or more families." The primary purpose of the R-4 District is "the stabilization of remaining one-family dwellings." 11 DCMR § 330.1.

16. The Ward 4 Element of the Comprehensive Plan, in sections 1507 and 1508, recognizes housing as the primary land use in the Ward and encourages the protection and preservation of residential neighborhoods.

17. The Zoning Regulations in 11 DCMR § 2507 restrict the use of alley lots. According to OP, these restrictions originated with the Lewis Plan and the 1958 Zoning Regulations. The 1958 regulations sought to address problems with alley dwellings, many of which lacked sufficient air and light and had become slums. OP advises that this planning consideration remains relevant.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under Section 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code § 5-424(g)(3)), to grant variances from the strict application of the Zoning Regulations. Mr. Hamblen is seeking a variance from 11 DCMR § 2507.2, relating to buildings on alley lots. Subsection 2507.2 states that:

> A one-family dwelling shall not be erected or constructed on an alley lot unless the alley lot abuts an alley thirty feet (30 ft.) or more in width and has from the alley access to a street through an alley or alleys not less than thirty feet (30 ft.) in width.

The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met.

Under the three-prong test for an area variance set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) granting the variance will not result in substantial detriment to the public good or to the zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment,* 579 A.2d 1164, 1167 (D.C. 1990). To demonstrate practical difficulties, the applicant must show that compliance with the area requirements of subsection 2507.2 would be unnecessarily burdensome and that the practical difficulties are unique to the particular property. *Gilmartin,* 579 A.2d at 1170.

Further, the Board is required under D.C. Code § 5-412.4 to give "great weight" to OP recommendations. The Board is also required under D.C. Code § 1-261(d) to give "great weight" to the affected ANC's recommendation. Under Section 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, 47 DCR 5519 (2000)) (to be codified at D.C. Code § 1-261(d)(3)(a)), the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances, articulating specific findings and conclusions with respect to each of the ANC's issues and concerns. The Board has carefully considered both the OP and ANC 4C reports and, as explained in this decision, finds their recommendations to deny the application persuasive.

The Board concludes that the applicant has not met his burden of proof under 11 DCMR § 3103.2. The Board concludes that there are no unique or exceptional conditions associated with the subject alley lot that would cause the applicant practical difficulties in using the property in accordance with the Zoning Regulations. Under 11 DCMR § 2507.6, the applicant may seek special exception approval to use the lot for the storage of wares and goods, parking lots, parking garages, and public storage garages. Subsection 2507.5 also allows use of the lot for an artist studio. The applicant has not provided the Board with any evidence that would show that it would be unnecessarily burdensome to use the property as permitted by the regulations.

Moreover, with the narrow alleys restricting emergency access to the lot, the proposed project presents serious public health and safety concerns. The project would result in an increase in the number of vehicles travelling through the narrow alley system, adversely affecting traffic circulation and presenting further obstacles for the trash trucks which already have difficulty negotiating the alleys. While the provision of one parking space for each townhouse meets the requirements of the Zoning Regulations, multiple-vehicle homes and guest parking would generate additional parking demand in a neighborhood where parking is already in short supply. The proposed number of townhouses and their orientation toward the back yards of the adjacent properties would adversely affect the quality of life enjoyed by the adjacent property owners with respect to privacy, quiet, views, and open space. Given their location at the center of a square, surrounded by narrow alleys and the backs of adjacent row dwellings on all sides, and with access to a public street only through narrow alleys, the adjacent neighbors, OP, and ANC 4C fear that the proposed townhouses could result in overcrowding, a reduction in property values, and destabilization of the neighborhood. The Board finds their concerns well founded and concludes that the proposed subdivision and construction would result in substantial detriment to the public good.

Finally, the Zoning Regulations for the R-4 District seek to preserve and stabilize residential neighborhoods. In addition, the Zoning Regulations restrict buildings on alley lots to prevent urban decay and to preserve air, light, and access. The proposed variance, which would adversely affect the privacy, quiet, views, and access enjoyed by existing residential properties and which would threaten the stability of the neighborhood, would substantially impair the zone plan as embodied in the Zoning Regulations and Map.

For the reasons stated above, the Board concludes that the applicant has not met his burden of proof. It is hereby **ORDERED** that the application is **DENIED.**

VOTE: 4 – 0 (Carol J. Mitten, Robert N. Sockwell, Sheila Cross Reid, and Anne M. Renshaw, to deny; Rodney L. Moulden, not voting, not present).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order and has authorized the undersigned to execute this Decision and Order on his or her behalf.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

JAN 3 0 2001

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16550

JAN 30 2001

As Director of the Office of Zoning, I hereby certify and attest that on _____, a copy of the foregoing Decision and Order on BZA Application No. 16550 was mailed first class, postage prepaid, to each party and public agency that appeared and participated in the public hearing concerning this matter and that is listed below:

Mr. Klaus Klatt
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ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director