27 June 2000

PROPOSED FINDINGS AND CONCLUSIONS

Application No. 16573 of Martin E. Hardy, pursuant to 11 DCMR 3103.2, for variances for the construction of a two-family flat from Sections 402.4 from the maximum floor area ratio requirements for a structure; 403.2 from the permitted percentage of lot occupancy requirements for a structure; 404.1 from the minimum depth of the rear yard requirements; and 406.1 from the minimum width and area of a closed court requirement in a DCOD/R-5-B District at premises 1821 and 1823 Florida Avenue, N.W. Square 2556, Lot 28 (formerly lots 808 and 812).

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OFFICE OF ZONING
DISTRICT OF COLUMBIA

HEARING DATE: June 20, 2000

DECISION DATE: July 5, 2000

DECISION AND ORDER

Preliminary and procedural matters

Applicant The applicant, Martin E. Hardy, is the owner of the property that is the subject of this Application. He was represented and assisted by Ms. Gladys Hicks (Zoning Consultant), Mr. Michael Vallen (architectural designer) and Mr. James Smith (Land Use and Zoning Consultant a.k.a. Mr Permit L.L.C.).

Application The applicant filed an Application with the Board of Zoning Adjustment (Board) on February 15, 2000 pursuant to 11 DCMR 3103.2 for variances for the construction of a two-family flat from Sections 402.4 from the maximum floor area ratio requirements for a structure; 403.2 from the permitted percentage of lot occupancy requirements for a structure; 404.1 from the minimum depth of the rear yard requirements; and 406.1 from the minimum width and area of a closed court requirements in a DCOD/R-5-B District at premises 1821 and 1823 Florida Avenue, N.W. Square 2556 lot 28 (formerly lots 808 and 812).

BZA
Case No. 16573
Exhibit No. 73

Board of Zoning Adjustment
District of Columbia
CASE NO.16573
EXHIBIT NO.73

Notice of Application and Notice of Public Hearing By memorandum dated March 29, 2000, the Office of Zoning advised the Office of Planning, the Zoning Administrator, and Advisory Neighborhood Commission (ANC) 1C, the ANC for the area within which the subject property is located, of the Application.

The Board scheduled a public hearing on the Application for June 20, 2000. Pursuant to 11 DCMR 3113.13, the Office of Zoning on April 6, 2000 mailed the applicants, the owners of all property within 200 feet of the subject property, and the ANC-1C notice of hearing. Notice was also published in the DC Register. The applicant's affidavit of posting and maintenance indicates that the zoning poster was placed and maintained in front of the subject property beginning on May 30, 2000, in plain view of the public.

Requests for Party Status The following persons in opposition to the Application requested party status: (1) Mrs. Elaine Morris, pro se, as President of the Lothrop House Condominium Association, and representing Jose Quiroga and Gertrude Dicks, owners of certain condominiums in the Lothrop House (1822 Vernon Street, N.W.); and (2) Mr. Boushra Hanna, President of Hanna Association, owner of 1818 Vernon Street, N.W. The notice of intent to file party status by Mr. Hanna was made after the deadline of 14 days prior to the hearing. The Board determined that the requests met the party status criteria as both applicants live in and/or own properties immediately behind the subject property and would be more significantly affected by the proposed development than the general public.

Applicant's Case The applicant's case was presented by Ms. Gladys Hicks (Zoning Consultant), Mr. Michael Vallen (architectural designer) and Mr. James Smith (Land Use and Zoning Consultant) as well as by the applicant, Mr. Hardy. Mr. Vallen also presented massing studies of the proposed building, and of an Alternative proposal, scale models of the two proposals and surrounding properties, and sun studies of the project and its immediate surroundings.

The ANC Report The ANC-1C submitted a report dated June 13, 2000 supporting the application. The report considered that the case fitted the basic provisions in zoning law D.C. Code Section 5-424(g)3(1981) having to do with the irregular shape of this small property and shallowness of its depth justifying a request for an area variance. Additionally, it

considered that the request furthers the interest of the "public good" in that it is for a residential use in an R-5-B district on an eyesore site, which without relief may be virtually unbuildable. The report also considered that detailed alternative plans were desirable to ascertain the most feasible development of the property to result in the most minimal intrusion into desired separation at the rear from the property behind it.

Persons in Support of the Application Mr. John Rutkowsky, owner of 17 properties and condominium units within 200 feet of the proposed development, testified in support of the application. In addition, letters of support have been received by the BZA from seven other neighbors with properties within 200 feet of the proposed development, and are on file. These letters are from Messrs. William Trittipoe, Vincent Walsh, George Vickers, Troy Teeboom, William Carter, and David Bunch Jr., and Ms. Jennifer Campbell. The authors of the letters consider the existing garages to be a festering eyesore and a disgrace to a neighborhood trying to rebuild a vibrant community. They also cite the applicant's proven track record in rebuilding a property at 1812 Florida Avenue, N.W. during 1997-99, and urged the Board to seize the opportunity to provide a viable and positive alternative to the current use of the subject property. Signatures of these neighbors and of other property owners within the 200- foot radius in support of the application are on a petition that is on file. The signatures are of the owners of a total of 47 adjacent properties.

Parties in Opposition to the Application Mrs. Elaine Morris (representing herself as property owner, the Lothrop House Condominium Association and two individual condominium owners)and Mr. Boushra Hanna (owner of 1818 Vernon Street N.W.) testified in opposition to the application. Each stated that they had separately offered to buy the property from Mr. Hardy. They argued that its continued use as garages was both economically justifiable and the best use, and cited concerns as to the impact of the proposed development on the sunlight, ventilation and views of their respective properties (1818 and 1822 Vernon Street, N.W.). Mrs. Morris also expressed concern that construction debris may fall on her property and that construction would interfere with the peaceful enjoyment of the property. Both parties also asserted that there would be an adverse impact on parking in the neighborhood.

Closing of the Record At the conclusion of the hearing, the Board left the record open to receive certain materials from the applicant. These

included: photographs of models shown at the hearing; plans of the proposed Alternative development presented at the hearing; supplementary material related to verification of sun calculations; a copy of the Subdivision Plat combining lots 808 and 812 into Square 2556, lot 28, recorded by the D.C. Surveyor's Office in Book 193 Page 156 on June 7, 2000; and a Construction Management Plan. The requested materials were filed on June 23, 2000, with copies to the Parties. The Board also left the record open to receive the parties' proposed findings and conclusions, which were to be provided by June 27, 2000.

Decision Meeting At its decision meeting on July 5, 2000 the Board by a vote of ...., approved the application, citing a preference for the Alternative development proposed by the applicant.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The application involves contiguous garages/storage buildings that were purchased by the applicant as Square 2556, lots 808 and 812, and combined by Subdivision as Square 2556, lot 28, recorded June 7, 2000. The property is known as 1821-23 Florida Avenue, N.W. It is in an R-5-B zone district. The property is an irregularly shaped double trapezoid, and covers an area of 1,054.32 square feet. The walls on the west, north and east sides are mostly built on the property line. There is 10 foot section behind the west garage that is 7 ½ inches behind the property line, and a section of some 14 feet is a party wall shared with 1822 Vernon Street (The Lothrop House Condominiums).
2. The existing buildings occupy more than 75% of the total area of the property. The walls on the west and north sides of the property serve as retaining walls as well as building walls, as the grade in the rear is more than 10 feet above the street level on Florida Avenue. There are no rear or side setbacks. The rear walls of the property are at a distance of 10 feet 7 inches and 15 feet 10 inches from the properties known as 1818 and 1822 Vernon Street, respectively, though at the nearest point (i.e. where structures are built on the lot line) there is a separation of only 1 foot 3 inches. No Certificate of Occupancy is on file.
3. The property was originally carved out from 1818 and 1822 Vernon Street, but has been separate for perhaps 60 years. It was part of the estate of Bernard and Mariam Mizel, and was sold to the applicant by Iris

McCollum Green, Successor Personal Representative of the Estate of Mariam Mizel on September 9, 1999.

4. The property is bounded on three sides to the west, north and east by multi-unit condominium and rental apartment buildings more than 50 feet in height above Florida Avenue. To the south, across Florida Avenue, are 2- and 3-story single-family and multi-unit residences.
5. The garages are in an advanced state of decay and dilapidation, and are the last remaining vestige of urban blight on the 1800 block of Florida Avenue, N.W. There is evidence of rodent infestation in the area behind the garages belonging to 1818 Vernon Street N.W. Water run-off from improper grading of the parking lot of 1822 Vernon Street N.W.(The Lothrop House Condominiums) is causing damage to the brick structures of the subject property. The Lothrop House Condominium Association has constructed a 7 foot chain link fence immediately abutting the subject property on the west and north sides. There is nothing on record to indicate that this fence is correctly located entirely on the Lothrop House property.

The Proposed development

6. The applicant proposes to build a 2-family flat on the existing garages and incorporating the present structures. The proposed building would be 31 feet in height. It would have a one-car garage to serve the principal residence. It also would have a court niche at the rear east side to allow for windows and secondary egress: otherwise no windows would be constructed on the east, north and west sides because of the proximity to property lines. There would be a recessed roof deck in the south-west section of the roof area.
7. In an effort to accommodate concerns voiced by the ANC and others, the applicant also presented an Alternate proposal. In this proposal, the court niche would be eliminated and the above-grade second and third floors would be moved forward (i.e. away from the rear of 1818 and 1822 Vernon Street) by 3 feet. The building would also include bay windows and stoops to be constructed in public space, as well as a roof deck towards the front. Under the Alternate plan, the building would be 29 feet in height i.e. some 2 feet lower than in the original proposal. The floor area would be virtually identical under both proposals.
8. Under the Alternate plan the applicant intends to still use the footprint of the existing structure, which is considered a cellar, being less than 48 inches above the average grade at the rear of the lot and is therefore permitted under the Zoning Code. The Alternate plan also moves the

north-west corner of the new structure away from the Lothrop House to a distance of 15 feet at the closest diagonal point, measured to the building rather than the one-story windowless accessory structure built to the lot line). As such, the separation of the proposed building from the rear of either 1818 or 1822 Vernon Street would be greater than the distance which currently separates the approximately 60 windows that face each other across the court between the two buildings.

Density and Zoning

9. A 2-family flat is within the applicable zoning regulations as a conforming use, and the applicant will be changing a current non-conforming use to a conforming use with a Certificate of Occupancy. (The current garages do not have a CO: application for a CO would trigger another BZA hearing). Based on the applicant's disclosure, the extra expense of utility service i.e. water service, sewer service and other on-site utility requirements represents a substantial fixed cost for developing the site. In addition, the existing walls, which serve as both building walls and retaining walls for the properties on the west, north and east sides, require serious remedial work including structural engineering inputs, which will add substantial further costs. Part of this remedial work is necessitated by the water damage caused by the improper grading of the parking lot of the Lothrop House. These considerations justify the requested density.

Impact on light

10. Sun studies indicated that, even at the winter solstice, all windows at the rear of both 1818 and 1822 Vernon Street will receive direct sunlight for at least part of the day. Moreover, such shadowing as occurs at the winter solstice in the afternoon is caused by 1825 Florida Avenue (a 50-foot apartment building) rather than by either alternative building envisaged in the applicant's proposal. At the summer solstice, there is no impact whatsoever from the applicant's proposal (under either Alternative) on any of the windows of the adjacent properties.
11. These studies were carried out using AutoCad 14 and Accurender 3, using real world coordinates and true north. The programs that were utilized are utilized by the vast majority of architects, engineers and related professionals around the world, and are commercially available. The program has been rerun to take account of Daylight Saving Time and the coordinates used in the studies have verified against a second

program (Susdesign), whose numbers have been checked to three digits of precision.

Impact on air circulation

12. Since the proposed building does not abut any of the neighboring buildings it is not possible to conclude that there will be any interference with air circulation. When the air is moving, there could be some acceleration in flow due to wind-tunnel effects: when the air is still, the effect, if any, is indeterminate.

Impact on parking

13. Under the applicant's proposal, up to two new spaces will become available to the general public as a result of the closure of one of the two curb cuts on Florida Avenue that provide access to the garages at present. Since there is no Certificate of Occupancy on file, the current use of the existing garages for commercial parking is illegal. Therefore it is not possible to argue that any parking spaces will be lost. Since commercial use is not permitted under R-5-B zoning regulations, obtaining a CO would require a hearing and specific approval by the BZA.

Impact on the Lothrop House

14. The two residents of the Lothrop House that sent letters of opposition to the BZA and asked to be represented by Mrs. Morris were shown to have no interests that would be more significantly, distinctly or uniquely affected in character or in kind than the general public. Unit #201,which is owned by Ms. Gertrude Ding, is located at the front of the building and overlooks Vernon Street: the rear window which opens into the space between the Lothrop House and 1818 Vernon Street is more than 85 feet from the proposed building. Apartment 306, which is owned by Mr. Jose Quiroga, occupies the upper 2 floors at the south-west corner of the Lothrop House: its nearest window is more than 30 feet distant and 12 feet higher in elevation than the nearest part of the proposed building, and the view therefore would not be significantly affected. In any event, as explained by Mrs. Morris in initial testimony, Mr. Quiroga has withdrawn his opposition as he is selling his apartment and moving from the Lothrop House.
15. As to Mrs. Morris herself, her testimony indicated that she occupies the penthouse suite on the top two floors at the front of the Lothrop House, facing Vernon Street. At the closest point, her apartment is 73 feet away from, and more than 20 feet above, the nearest point of the proposed

building. Also, virtually no part of the proposed building can be seen from her duplex, or from the roof deck. Mrs. Morris also owns 4 other units in the Lothrop House. Of these, 2 are in the front of the building facing Vernon Street and therefore will not be significantly affected by the applicant's proposal. The other two units (LL1 and 103) are already affected in terms of light, noise and ventilation by the virtually uninterrupted parking of a large plumber's van and other vehicles at the rear of the Lothrop House. Mrs. Morris is the owner of the three parking spaces at the rear of the Lothrop House. The remaining rear area, which encompasses these parking spaces, is owned by the Lothrop House Condominium Association, which therefore should decide on matters relating to access, etc.

Impact on 1818 Vernon Street

16. According to the testimony, Mr. Boushra Hanna will not be directly affected by the proposed development as he resides in Richmond, VA. None of the 18 units in the building will find their light or air significantly affected, and the view from only 2 windows will be significantly affected. As noted, all windows at the rear of 1818 Vernon Street will enjoy direct sunlight throughout the year, and in the summer there would be no impact whatsoever on access to sunlight.
17. In further testimony, Mr. Hanna claimed that the closure of the second curb cut would impede access to the rear yard of 1818 Vernon Street. At present, access to the rear yard is carried out through an illegal maneuver—vehicles cross the curb line via the curb cut in front of the applicant's garages and drive along the sidewalk to access the rear yard of 1818 Vernon Street. This argument is therefore without merit.

Unclean Hands of the Parties in Opposition

18. Based on the testimony, both Mrs. Morris and Mr. Hanna demonstrated and expressed an interest in buying the property from the applicant. They came before the Board with unclean hands, having an ulterior motive to deny Mr. Hardy of the possibility of building on the garages or altering their use, and to force Mr. Hardy in a hostile way to sell them the property to their economic gain.

Noise Aspects

19. The applicant has taken design steps to ensure that all utility as required by the code will be venting at the front of the proposed building or on the roof. To prevent noise affecting neighbors there are no windows, vent

fans, air-conditioning or other noise-causing devices on the rear and side walls of the proposed building. All water discharge will be to the front of the building and drain into the sanitary sewer as required by the Building Code. Air-conditioning compressors will be placed on the roof towards the front of the building.

Other issues

20. The applicant has indicated in the Construction Management Plan submitted to the Board that he will take special care when constructing the brick walls or other construction activities not to disturb neighbors. In case any mortar or sand is spilled onto the property of the immediate neighbors, he will do everything possible to work with Hanna Association and with the Lothrop House Condominium Association to allow the immediate cleaning of any areas that may have been affected inadvertently. He has stated that he will also cooperate with the neighbors as far as possible to mitigate any adverse impacts as regards noise, after-hours construction, theft, rodents, and/or accumulation of debris by regular disposal of such.

Conclusion and Decision

Based on the findings of fact and having given great weight to the recommendations of the ANC-1C, the Board concludes that the applicants have met their burden of proof. The Board found that the irregular shape of the lot justifies the requested variances. The density requirement was considered appropriate due to the requirement for all new utilities and for substantial shoring of retaining/building walls—added costs which makes a less dense structure economically unfeasible. The Board found that the proposed development will not adversely affect the neighboring properties. On the contrary, the entire 1800 block of Florida Avenue, N.W., and the Adams-Morgan neighborhood more generally stands to benefit from the cleaning up of an obvious eyesore and the upgrading of the present dilapidated garages into a 2-family townhouse in keeping with the aesthetic integrity of the neighborhood. More broadly, the District of Columbia also stands to benefit from an improved utilization of the subject property, with its corresponding favorable impact on revenues.

It is hereby ORDERED that the application be GRANTED. In making this determination, the Board expressed a clear preference for the Alternative proposal as being more accommodative of the concerns of the immediate neighbors.