GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16727 of United House of Prayer for All People, pursuant to 11 DCMR § 3103.2 for a use variance to build a new apartment house under subsection 330.5, not meeting the lot occupancy requirements under section 403, and the parking requirements under subsection 2101.1 in an R-4 District at premises 626 S Street, N.W. (Square 442, Lots 864 and 865).

HEARING DATES: July 17, 2001, September 20, 2001
DECISION DATE: September 20, 2001

DECISION AND ORDER

The applicant in this case is United House of Prayer for All People, the owner of the lots that are the subject of the application. The application was filed with the Board of Zoning Adjustment on April 3, 2001, pursuant to 11 DCMR § 3103.2, for a variance from § 330.5, matter of right use, and § 403, lot occupancy requirements, in an R-4 District, to allow the construction of a three story, 16 unit apartment building at 626 S Street, N.E. (Square 442, Lots 865 & 865). After a public hearing, the Board denied the application on the grounds that the applicant did not meet its burden of proof with respect to showing undue hardship and practical difficulties.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memorandum dated April 29, 2001, the Office of Zoning advised the Applicant, the Zoning Administrator (Department of Consumer and Regulatory Affairs), the Office of Planning, the Department of Public Works, the ANC 2C (the ANC for the area within which the subject property is located), the affected single member district ANC Commissioner, and the Councilmember for Ward 2, of the application.

The Board scheduled a public hearing on the application for July 17, 2001. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed the Applicant, the owners of all property within 200 feet of the subject property, the Department of Public Works, the Office of Planning and ANC 2C a letter dated May 29, 2001, providing notice of hearing.

The Applicant's affidavit of posting indicates that one zoning poster was placed at the subject property on July 1, 2001, in plain view of the public.

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Applicant's Case. The applicant was represented through its architect, Suzanne Reatig. The applicant wishes to demolish an existing, nonconforming apartment building and replace it with a new apartment building. The applicant argued that it could not afford to rehabilitate the existing non-conforming apartment building on the property. The size of the existing units, the applicant argued, presents a significant obstacle to renovation under current D.C. Building Code standards. The applicant also stated that it could not construct the type of multi-unit affordable housing it desired on the site under the current R-4 zoning designation for the property, as the R-4 District does not permit the construction of new apartment houses. In addition, the proposed building would not comply with R-4 percentage of lot occupancy restrictions.

Self-certification. The applicant self-certified on March 30, 2001, that it needed variances from §§ 330.5, 403 and 2101.1 of the Zoning Regulations.

Requests for Party Status. The Board received no requests for party status.

Government Reports. The Office of Zoning, after consulting with the Zoning Administrator, submitted a memorandum dated July 23, 2001, stating that the applicant's project would be subject to a 40% lot occupancy requirement, pursuant to the 11 DCMR § 403 limitation on "all other sructures", and would be required to provide 5 parking spaces, pursuant to 11 DCMR § 2101.1.

The Office of Planning report was received on July 16, 2001, less than 7 days before the Board's hearing on this application. The Board waived its rules to accept this report into the record. The report recommended approval of the application, but concluded that the applicant had met the maximum lot occupancy, which the Office of Planning stated was 60% for the applicant's proposed development (the percentage of lot occupancy permitted for "row dwellings").

The Office of Planning's supplemental report was received on September 5, 2001. The supplemental report stated that the applicant would be subject to the 40% lot occupancy requirements in an R-4 District since the proposed building is not a row dwelling. The supplemental report then concluded that the applicant had not met its burden of proof with respect to a variance from this requirement.

The Department of Public Works, District Division of Transportation, submitted a report dated July 2, 2001, stating that it had no objections to the proposed project based on parking and traffic considerations.

ANC Report. A report from ANC 2C was received on July 2, 2001. The report stated that the ANC, at its regularly scheduled meeting of June 6, 2001, with a quorum present, voted its approval of the application in light of the fact that affordable housing is badly needed in the District of Columbia. The vote was 6 to 0 in support of the application.

Parties and Persons in Opposition to the Application. There were no parties or persons in opposition to the application.

Site Plans. The applicant submitted site plans on April 3, 2001, together with front, side and rear photos of the property, and submitted revised site plans on August 27, 2001.

Hearing. A hearing was held on the application on July 17, 2001. Board members present at the hearing included: Sheila Cross Reid, Anne M. Renshaw, Geoffrey H. Griffis, David W. Levy, and Carol J,. Mitten. Speaking on behalf of the applicant were Apostle S. Green, Suzanne Reatig, Apostle W. Johnson, and Apostle J. Smith. Maxine Brown-Roberts represented the Office of Planning. Doris Brooks from ANC 2C testified in support of the application. No persons appeared in opposition to the application.

At the close of the hearing, Chairperson Sheila Cross Reid made a motion to approve the application. The motion failed for lack of a second. Board Member Carol J. Mitten made a motion to deny the application. Ms. Mitten withdrew the motion after further discussion among the Board members. The Board then decided to continue the case and asked the Zoning Administrator to make a determination as to whether the applicant required a lot occupancy variance. The Board left the record open for the applicant to submit revised site plans.

Second hearing. The Board held another hearing on this case on September 20, 2001. At that hearing, the Office of Planning testified that physical characteristics of the site do not present undue hardship for the applicant, but that the Office of Planning still supported the application.

Decision. At its September 20, 2001, hearing, Chairperson Cross Reid made a motion to approve the application. The motion was seconded by Board Member Griffis. The motion failed by a vote of 1-3 and the application is therefore deemed denied.

FINDINGS OF FACT

1. The subject property is Lots 864 and 865 in Square 442.

2. The proposed development is in an R-4 District, which does not allow apartment buildings as a matter of right use.

3. The subject property contains an abandoned non-conforming 12-unit apartment building. The building is in poor condition and uninhabitable.

4. The building currently on the site could not be renovated economically due to its poor condition and outdated building standards.

5. The applicant proposes to demolish the existing non-conforming building and replace it with a non-conforming 16-unit apartment building.

6. The proposed apartment building is classified as an "other structure" for purposes of the maximum percentage of lot occupancy requirements in 11 DCMR 403.2, such that lot occupancy requirements for the project would be 40%.

7. The applicant's project will occupy 60% of the lot area.

8. The Board agrees with the Office of Planning that two townhouses could be built on the site as a matter of right use.

9. ANC 2C's support of the project was based solely on the community benefits brought by the type of housing the applicant proposed.

10. The applicant later revised its Site Plan to include five parking spaces, making a variance from § 2101.1 parking requirements unnecessary.

11. The applicant has not asserted or shown that the property cannot be put to any conforming use with a fair and reasonable return arising out of the ownership of the property.

CONCLUSIONS OF LAW

The Applicant seeks variance relief in an R-4 District from 11 DCMR § 305.1, matter of right uses, and from 11 DCMR § 403, lot occupancy restrictions. Section 305.1 does not list the applicant's proposed use, apartment building, as a matter of right, and therefore a use variance from this provision is required. Section 403, meanwhile, requires that the applicant's proposed use occupy only 40% of the lot area, while the proposed project instead would occupy 60% of the area. The applicant also needs a variance from § 2002.6, which provides that a new structure shall not be erected to house any nonconforming use.

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 30, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code § 6-641.07 (2001)) to grant variances where "by reason of exceptional narrowness, shallowness, or shape of a specific property. . . or by reason of exceptional topographical conditions or other extraordinary or

exceptional situation or conditions" 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. Code § 6-641.07(g)(3), 11 DCMR § 3103.2. The standard of "practical difficulties" applies to an area variance, while the "undue hardship" standard applies to use variances. Palmer v. Board of Zoning Adjustment, 287 A.2d 535 (D.C. 1972).

Additionally, variance 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.

The applicant has not met its burden of proof with respect to showing undue hardship or practical difficulties.

Both the Office of Planning and the applicant stated that the type of housing that could be constructed under matter of right zoning on the applicant's property would not be affordable for low-income residents. They argue that a use variance is therefore appropriate to enable the applicant to instead construct more affordable units. In the past, this Board has granted variance relief after a showing of an economic burden where no matter of right use whatsoever was economically feasible. However, the applicant here has made no such showing. It has merely argued that it cannot construct the type of building it desires to construct without a variance. See, e.g., Tyler v. D.C. Board of Zoning Adjustment, 606 A.2d 1362 at 1366, 1367 (D.C. 1992) (proof of economic burden is relevant to decision of whether to grant variance where applicant is not merely seeking the most favored use for its land but faces difficulty financing any improvement of property under current zoning designation). The applicant has not shown that there are no other alternatives for the site, such as row dwellings or flats, that are feasible as a matter of right. See, Myrick v. District of Columbia Board of Zoning Adjustment, 577 A.2d 757 (D.C. 1990) (court notes that applicant did not contend that alternatives were unavailable).

As for the area variance, the applicant presents no reason as to why, even if the use variance was granted, meeting the 40 percent lot occupancy restriction creates practical difficulties. See Association for Preservation of 1700 Block of N St., N.W., & Vicinity v. District of Columbia Bd. of Zoning Adjustment, 384 A.2d 674 (D.C. 1978) (court upheld grant of area variance from off-street parking requirements because there was no feasible alternative that would have complied with the zoning regulations). As the Office of Planning noted in its supplemental report, the increase in lot occupancy would only serve to permit a larger building with a larger number of units.

The Board appreciates that the applicant has laudable goals behind its proposed construction. However, such goals alone cannot justify variance relief under the current Zoning Regulations where the more appropriate method of relief is through the map

amendment process. The Board is therefore left with no choice but to deny this application.

Pursuant to 11 DCMR § 3126.11, an applicant "whose application has been denied shall not institute a new appeal or application on the same facts within one (1) year from the date of the order upon the previous appeal or application".

DECISION DATE: September 20, 2001

VOTE: 1-3-1 (Sheila Cross Reid to grant the application, Geoffrey H Griffis, Carol J. Mitten, and David W. Levy, opposed; Anne M. Renshaw not present, not voting). The motion failed for lack of a majority and the application is therefore denied.

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

JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: JAN 10 2002

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.

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As Director of the Office of Zoning, I hereby certify and attest that on JAN 10 2002 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:

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Director, Office of Zoning