GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16730 of Bundy Development Corporation, pursuant to 11 DCMR § 3103.2 for variances from the floor area ratio requirements under section 402, and the height limitations under section 400, to allow the construction of an apartment house in the R-5-C District at premises 1320 13th Street, N.W. (Square 243, Lot 26).

HEARING DATE: **June 19, 2001**
DECISION DATE: **July 10 and 31, 2001 (Bench Decision)**

SUMMARY ORDER

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2 (Exhibit No. 6).

The Board received a request for party status from Edward R. Reed and Robert A. Lawrence (Exhibit No. 30). Messrs. Reed and Lawrence indicated that after meeting with the applicant's representative, their concerns were addressed. The request was withdrawn. (Exhibit No. 49).

The applicant indicated that zoning relief is needed because, unbeknown to her, the D.C. Zoning Commission rezoned the property from R-5-D to R-5-C. The applicant stated that because the rezoning was unknown, the project was fully designed based on the R-5-D zoning requirements; approvals were received from the D.C. Historic Preservation Review Board; complete plans and drawings were prepared by an architect and consulting engineers; and an application for a building permit was submitted to the Department of Consumer and Regulatory Affairs, and the application fee paid.

The site is located in the Logan Circle neighborhood of Ward 2, in the Logan Circle Historic District. The 5,435 square foot site is irregularly shaped. Immediately to the north and south of the site are three-story town houses; a 90-foot apartment building is under construction at the southern end of the block; and across the street, the height of the Iowa Apartment Building is between 80 and 90 feet.

The applicant proposed to construct a five-story, plus cellar, building that would consist of 19 condominium apartment units. The building was designed to the R-5-D standards, a floor area ratio (FAR) of 3.5, and a height of 75 feet. The applicant reduced the height of the building from 75 feet to a maximum of 68 feet, at the public hearing. The building is to contain 19,201[1]

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[1] **The Office of Zoning requested that the applicant identify the size of the building. On August 24, 2001, the applicant provided the information by telephone.**

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square feet. Six below-grade parking spaces are proposed. The project's revised building plans are located at Exhibit No. 58.

The following chart summarizes the pertinent zoning data:

Zoning Classification	Allowed R-5-D	Allowed R-5-C	Provided	Variance From R-5-C Requirements
Height	90'	60'	68'	8'
Floor Area Ratio	3.5	3.0	3.5	.5
Gross Floor Area	19,022 sq. ft.	16,305 sq. ft.	19,201 sq. ft.	2,896 sq. ft.

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register and by mail to the applicant, Advisory Neighborhood Commission (ANC) 2F, and to owners of all property within 200 feet of the property that is the subject of this application.

The subject property is located within the jurisdiction of ANC 2F. ANC 2F, which is automatically a party to this application, submitted written statements on the application. In the ANC's last submission to the Board, dated July 13, 2001, the ANC supported the applicant's revised plans to construct the residential building to a height of 68 feet; although it continued to support the R-5-C zoning of the site (Exhibit No. 64).

By correspondence dated June 13, 2001, the Office of Planning (OP) recommended that the application be denied (Exhibit No. 44). OP's rationale for recommending denial of the application was:

- The Zoning Commission rezoned the area in the general vicinity of the site after extensive effort, which began in 1997. The property was originally zoned R-5-D, but as a result of the rezoning, Case No. 97-7, the site was rezoned to R-5-C. If the application were to be approved, it would impair the intent and purpose of the rezoning.

- The zoning certification the applicant received from the Office of Zoning was correct. The zoning of the site did not change, technically, until almost four months after the applicant closed on the property.

- The cost that the applicant incurred prior to learning that the site is zoned R-5-C does not create a practical difficulty.

- If the building were to be constructed at the height prescribed by the R-5-D zoning requirements, it would be inconsistent with the surrounding properties and thus defeat the purpose of the Zoning Commission down-zoning the properties in the neighborhood.

- The purpose of the rezoning was to provide a gradual stepping down in height and density from Downtown to the Logan Circle area.

By correspondence dated February 22, 2001, the D.C. Historic Preservation Review Board (HPRB) indicated that it found the project's revised conceptual design consistent with the purposes of the preservation law (Exhibit No. 7).

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance from the strict application of the requirements of 11 DCMR §§ 3103.2, 402 and 400. No residents of the community appeared at the public hearing in opposition to this application.

The Board determined that:

- The zoning certification that the applicant received was technically correct; however, misleading and/or incorrect information was given to the applicant.
- The record contained overwhelming neighborhood support for the project.
- Advisory Neighborhood Commission 2F supported the application and was given the "Great Weight" to which the commission is entitled.
- The applicant reduced the height of the building from 75 feet to 68 feet to make it more compatible with the R-5-C zoning of the site.
- The site is located in the Logan Circle Historic District and therefore the applicant must comply with the design requirements of the Historic Preservation Review Board.
- The site is irregularly shaped and does pose some development constraints.
- The subject Square 243 contains R-5-B, R-5-C, and R-5-E zoning. The project is not inconsistent with the residential character of the neighborhood.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, under 11 DCMR §§ 3103.2, 402 and 400, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested 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. It is therefore **ORDERED** that this application be **GRANTED** with the following **CONDITION:**

The building shall have a height of 68 feet. (The Board allows for minor flexibility of design so that the project can reasonably accommodate the architectural embellishments and complement the fenestration and cornice lines of the buildings to the south; thus where appropriate, the building shall not exceed 75 feet.)

Pursuant to 11 DCMR § 3101.6, the Board waived the requirement of 11 DCMR § 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 3-1-1 (Geoffrey H. Griffis, Anthony J. Hood, and Sheila Cross Reid to approve; Anne Mohnkern Renshaw opposed to the motion; David Levy not hearing the case, not voting.)

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

Each concurring Board member approved the issuance of this Order.

JERRILY R. KRESS, FAIA
DIRECTOR

FINAL DATE OF ORDER: SEP 10 2001

PURSUANT TO 11 DCMR § 3125.6, THIS 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.

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 § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

BAB/8.24.01

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As Director of the Office of Zoning, I hereby certify and attest that on SEP 10 2001 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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