GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16803 JFC Builders, pursuant to section 3103.2, for variance relief under section 401, required minimum lot area, and section 2101, off-street parking requirements, to allow the conversion of a two unit flat into a three unit condominium in a R-4 District at premises 1358 Girard Street. N.W. (Square 2860, Lot 56).

HEARING DATE: February 19, 2002
DECISION DATE: March 19, 2002

DECISION AND ORDER

The applicant in this case is JFC Builders, the owner of the lot that is the subject of the application. The application was filed with the Board of Zoning Adjustment on September 9, 2001, pursuant to 11 DCMR § 3103.2, for a variance from sections 401 and 2101 relating to required minimum lot area and required off-street parking in a R-4 district at 1358 Girard St., N.W. (Square 2860, Lot 56). The Applicant seeks approval of conversion of a two-unit building to a three-unit building. After a public hearing, the Board voted 4 to 0 to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated October 12, 2001, the Office of Zoning advised the Applicant, the Office of Planning, the Department of Public Works, the ANC 1B (the ANC for the area within which the subject property is located), and the Councilmember for Ward 1, of the application.

The Board scheduled a public hearing on the application for December 11, 2001. The hearing was continued at the request of the applicant and was rescheduled for February 19, 2002. Pursuant to 11 DCMR § 3113.13, in October, 2001, the Office of Zoning mailed the Applicant, the owners of all property within 200 feet of the subject property, ANC 1B, the Office of Planning, and the Department of Public Works letters providing notice of hearing.

The Applicant's affidavit of posting indicates that one zoning poster was placed at the subject property on October 31, 2001.

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

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Applicant's Case. Mr. Edgar Nunley, authorized representative for JFC Builders, the property owner, presented the Applicant's case. Mr. Nunley argued that the circumstances of the building and the fact that the building permit to renovate the building had been issued in error, created practical difficulties such that a variance was required, while the impact on the surrounding community would not be adverse where a previously derelict building would now be owned by people who cared about the property and the surrounding neighborhood.

Government Reports.

A memorandum from the Acting Zoning Administrator, Toye Bello, dated February 14, 2002, stated that the off street parking requirement is the same for two unit and three unit buildings and that conversion from a two unit to a three unit building therefore does not invoke additional parking requirements.

The Department of Public Works, by memorandum dated December 5, 2001, stated that it had no objection to the application.

The Office of Planning report, recommending the application, was received on December 5, 2001.

ANC Reports. The ANC 1B report, dated February 14, 2002, stated that the Commission voted to approve the application by a vote of 3 to 2, with 2 abstentions, on February 7, 2002.

Parties and Persons in Opposition to the Application. Ms. Dorothy Brizill spoke in opposition to the application and submitted a summary of her testimony after the hearing at the request of the Board.

Parties and Person in Support of the Application. The Board received letters from W.F. Schortinghouse IV, Leon Rawlings, and Michael Rawlings, neighbors to the subject property, in support of the application. These letters were stricken from the record after concerns were raised as to their authenticity.

Hearing. A hearing was held on the application on February 13, 2002. Board members present at the hearing included Geoffrey H. Griffis, David W. Levy, Curtis L. Etherly, Jr., and Anthony J. Hood. Testimony was received from the Applicant's representative, Edgar Nunley, Stephen Cochran from the Office of Planning, and neighbors: Dorothy Brizill, Michael Rawlings, and Leon Rawlings. At the close of the hearing, the record was left open to accept a statement by Dorothy Brizill summarizing her testimony, a response by the applicant to Ms. Brizill's submission, and a statement by the Single Member District ANC Commissioner.

A statement by Ms. Brizill was received on March 5, 2002. The applicant's response to Ms. Brizill's submission was received on March 8, 2002.

Decision Meeting. At its decision meeting of March 19, 2002, the Board, by a vote of 4 to 0, approved the application.

FINDINGS OF FACT

1. The proposed development is in an R-4 District.

2. The subject building was constructed in 1910.

3. The Applicant seeks a variance for the pre-existing conversion of a two unit flat to a three unit building.

4. The property has contained three rental units for at least 20 years.

5. Electric and gas companies have been delivering service to three separate units from at least 1981 until recently.

6. For at least 20 years, in order to provide electricity to a unit, an electrical permit had to be obtained from DCRA. DCRA then inspects all electrical work during and after installation and no electricity is provided to a property until all requisite approvals have been obtained.[1]

7. A building permit, allowing for the renovation of the subject property, was issued in error where the only certificate of occupancy on record at DCRA was for a two-unit building.

8. On September 25, 2001, the Zoning Administrator, Michael Johnson, sent the applicant a letter stating that his application to use the subject property as a three-unit condominium could not be approved because DCRA's records indicate that the last issued certificate of occupancy for the subject property was for a two-unit building. Mr. Johnson stated that the owner would therefore have to establish that the three-unit building could be constructed as a matter of right before the application could be approved. The letter further indicated that a variance from the lot area requirements and the parking requirements might be necessary.

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[1] These facts were established by Vincent Ford, Program Manager, Building Inspections Division, DCRA, in signed a concurrence to a letter sent by Edgar Nunley. The letter was submitted into the record by Mr. Nunley.

9. A conversion from a two unit to a three unit apartment house in an R-4 District must provide a minimum of 900 feet per apartment, pursuant to §§ 330.5(c) and 401.3 of the Zoning Regulations.

10. The subject property provides only approximately 633 square feet per apartment unit.

11. The renovation of the subject property was approximately 70% complete before it was discovered that the only certificate of occupancy on record was for a two-unit building.

12. Immediately after discovering that zoning relief was needed, this application was filed with the Board.

13. It is possible, because of DCRA's past and present record keeping practices, that a certificate of occupancy was issued for a three unit building at the applicant's address but that a record of any such certificate of occupancy was misplaced and is no longer available.

14. Subsection 2100.4 of the Zoning Regulations states:

> . . . when the use of a building or structure is changed to another use which requires more parking spaces than required for the use existing immediately prior to the change or, if the building or structure is vacant, the use which existed immediately prior to the vacancy, parking spaces shall be provided for the additional requirement in the amount necessary to conform to Section 2102.

15. Section 2101 provides that a three unit residential building or a two unit residential building must provide one parking space.

16. Toye Bello, the Acting Zoning Administrator, in a "confirmatory notice", states that conversion from a flat to a three unit building does not invoke additional parking requirements.

17. The neighbors around the subject property largely support this application, with the exceptions of Ms. Brizill and Mr. Imhoff.

18. The area in which the property is located is of moderate density and is near a Metro station.

19. The construction appears to be of good quality, while the units are affordable to middle income residents.

20. The Ward 1 Element of the Comprehensive Plan stresses the provision for additional housing and the need for neighborhood stabilization. It also promotes the creation of housing near Metro stations.

CONCLUSIONS OF LAW

The Board is authorized 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) (2001 Ed.), 11 DCMR § 3103.2. Where an applicant seeks an area variance, as here, the above standard of "practical difficulties" applies, with the "undue hardship" standard applying only to use variances. Palmer v. Board of Zoning Adjustment, 287 A.2d 535 (D.C. App. 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 for a variance must show "that the difficulties or hardships [are] due to unique circumstances peculiar to the applicant's [lot] and not to the general conditions in the neighborhood.". Barbour v. District of Columbia Bd. of Zoning Adjustment, 358 A.2d 326, 327 (D.C. 1976) (quoting Palmer v. District of Columbia Bd. of Zoning Adjustment, 287 A.2d 535, 539 (D.C. 1972).

Because the apartment units comprising the subject building are approximately 633 square feet, less that the requisite 900 square feet required by §§ 330.5(c) and 401.3, the applicant needs a variance to allow conversion to a three-unit apartment building.

The Board finds that the circumstances surrounding the subject property constitute an exceptional situation. By all outward appearances, the subject property had been used as a three unit building for a number of years. Evidence that utility service was provided to each of the three units existed prior to the applicant's start of renovation. The government, in issuing the building permit, gave no indication that the building was not already approved as a three unit building. Nor is it certain that the requisite certificate of occupancy for three unit residential use was not at some point obtained for the subject building.

At the time the owner learned that there was no record of a certificate of occupancy for a three unit building, the renovation was already 70% complete. If a variance is not granted, the owner would have to substantially alter the building to accommodate only two units. These are not conditions generally applicable to the neighborhood or

surrounding properties. The Board therefore finds that if a variance is not granted the applicant will experience exceptional practical difficulties.

The Board further finds that variance relief can be granted to this applicant without substantial detriment to the public good or the integrity of the zone plan. The neighbors largely support the project, as does the Office of Planning and the local ANC. The renovation itself appears to be of good quality while the units remain affordable for middle income residents. As noted by the Office of Planning, delivering housing also comports with the District's high-priority objective of increasing the number of residents in the District. Moreover, the project conforms to the Comprehensive Plan for Ward 1, which encourages development near metro stations and neighborhood stabilization. Lastly, the R-4 zone typically contains moderately dense neighborhoods, which frequently contains older, smaller apartment units. Thus, the subject property does not compromise the zone plan for the District of Columbia.

Pursuant to §§ 2100.4 and 2101.1, above, the subject building, as configured with three units, is not required to have a parking space. The original building was required to have only one parking space. Because it was built before 1958, it is given what amounts to a credit of one parking space to establish it as legally nonconforming with respect to parking. A three-unit apartment building is also required to have only one parking space. Thus, because one parking space is already grandfathered, the parking requirement has been satisfied and a variance from parking relief is not necessary. Nevertheless, out of an abundance of caution, the Board ruled on this issue and found that, where the lot area of the subject property is too small to accommodate parking, variance relief was proper.

For the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby **ORDERED** that the application is **GRANTED**.

VOTE: 4-0-1 (Geoffrey H. Griffis, Anthony J. Hood, David W.Levy and Curtis L. Etherly, Jr. to grant the variance from the lot area requirements, Anne M. Renshaw not present, not voting).

VOTE: 4-0-1 (Geoffrey H. Griffis, David W. Levy, Curtis L. Etherly, Jr. and Anthony J. Hood to grant the variance from the parking requirements, Anne M. Renshaw not present, not voting).

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, Office of Zoning

FINAL DATE OF ORDER: MAY 13 2002

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.

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.

CB/rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16803

As Director of the Office of Zoning, I hereby certify and attest that on MAY 13 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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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning