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April 29, 2002

RECEIVED
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BY HAND DELIVERY

Mr. Geoffrey H. Griffis
Chairman
Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: BZA Application No. 16854; Response of Applicant to Materials Submitted at Request of Board Subsequent to the Public Hearing and Transmittal of Proposed Order

Dear Mr. Griffis and Members of the Board:

This letter constitutes the Applicant's response to the materials submitted at the request of the Board at the conclusion of the public hearing. This letter also transmits the Applicant's draft order.

1. Revised Report of ANC 6-B (April 16, 2002). The ANC "voted unanimously to support...the Applicant's request for a variance due to the width of said lot..." with two conditions (emphasis added).

With respect to the first condition, which pertains to "the neighbor's air and light", the Applicant revised its plans subsequent to, and in response to, the ANC action. (See letter from Lyle Blanchard, Esquire dated April 22, 2002 transmitting such revised plans to the Board.) Such revisions remove eighteen (18) feet from the rear of the third floor. Such revisions, together

BZA
Case No. 16854
Exhibit No. 61

Board of Zoning Adjustment
District of Columbia
CASE NO.16854
EXHIBIT NO.61

with the existing five (5) foot lightwell (court) at 313 E. Capitol Street, will provide adequate light and air to such property. The property to the east (317 East Capitol) is separated by a fifteen (15) foot wide public alley from the Applicant's property and thus its light and air will not be affected by the Applicant's proposal.

With respect to the second condition, which recommended that "the parapet on the front of the proposed construction be subject to further review" by H.P.R.B., the Applicant has agreed to use its reasonable efforts to seek approval from H.P.R.B. for a revised parapet.

2. Revised Report of the Office of Planning (April 22, 2002)

The Office of Planning recommends that the application be approved with modifications. On page 10 of its report, OP supports four of the five key elements that are contained in the Applicant's revised plans, as follows: (i) a top floor at a depth of 38 feet, (ii) a house depth of 56 feet, (iii) a deck of 18 feet, and (iv) a garage of 21 feet. However, the Office of Planning apparently recommends that the second floor be reduced from 56 feet to 38 feet. In so doing, it goes well beyond the recommendation of ANC 6B.

The OP recommendation to "gut" the second floor is unreasonable, unworkable and unjustified. A reduction of 18 feet on the second floor would drastically and dramatically reduce the size of, and essentially eliminate, the master bedroom and would eliminate in its entirety the master bath. It would reduce the size of the house -- which is well within the allowable FAR and lot occupancy -- so that the proposed house would become smaller than the homes of the Applicant's neighbors and other nearby houses. [Based upon public records, the Crenshaw house contains 4,311 sf, the Jones' house contains 4,734 sf and the Burr house contains 3,709 sf. By contrast, the Applicant's house, based on the revised plans, will contain 3,632 sf.] In addition, such a drastic reduction in living area as recommended by OP might make the Applicant's project unfinanceable.

Finally, the OP proposal ignores the facts that (a) the building at 313 E. Capitol Street has a 5 foot lightwell (court) for light and air and (b) the proposed house of the Applicant will comply with lot occupancy requirements, which are designed to provide adequate light and air for the subject property and nearby

properties. The OP proposal also ignores the fact that the building at 313 East Capitol Street is constructed to a depth of approximately 60 feet and appears to exceed the allowable lot occupancy. The real problem, ignored by OP, is that the house at 313 East Capitol Street is very large. (It contains 4,180 sf). To force the Applicant to build a substandard size house in response to a very large structure that has a lightwell (court) for light and air, is almost 4200 square feet in area and appears to exceed its allowable lot occupancy is neither a fair nor a reasonable compromise.

3. Request that Status of James Warlick as a Party be Terminated. It has come to our attention that Mr. Warlick was evicted from 313 E. Capitol Street on April 26, 2002 pursuant to an order of the U.S. Bankruptcy Court in Diversified Lending Services and Jacob I. Kramf (Bankruptcy Petition No. 00-15475). Such eviction, specifically, was pursuant to a Writ of Possession in Aid of Court Order dated April 2, 2002. Since Mr. Warlick qualified as a party only as a "tenant" and his status as a "tenant" has been terminated, we request that his status as a party be terminated.

4. Proposed Order. A draft order is attached hereto.

Thank you for your consideration of these views and this information.

Sincerely,

Jacques B. DePuy

Lyle M. Blanchard

Enclosure
JBD:mvl 181733

cc: Richard B. Nettler, Esquire
Mr. Timothy Burr (for himself and Mrs. Margaret Crenshaw)
Mr. Kenan P. Jarboe, Chairperson, ANC 6B
Office of Planning (Attn: Mr. John Moore)
Mr. and Mrs. Charles Holliday
(all copies w/encl.)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16854 of Mr. and Mrs. Charles Holliday, pursuant to 11 DCMR § 3103.2, for a variance from the minimum lot width requirements under section 401 for the construction of a flat in the CAP/R-4 District at premises 315 East Capitol Street, S.E. (Square 787, Lot 35).

HEARING DATE: April 9, 2002

DECISION DATE: May 10, 2002

DECISION AND ORDER

Mr. and Mrs. Charles Holliday, the owners of Lot 35 in Square 787, filed an application with the Board of Zoning Adjustment on February 11, 2002, seeking a variance from the lot occupancy requirements under section 403 and a variance from the minimum lot width requirements under section 401. The zoning relief in this case was self-certified, pursuant to 11 DCMR § 3113.2.

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Application and Notice of Hearing. By memoranda dated _____, 2002, the Office of Zoning notified the Zoning Administrator, the D.C. Office of Planning, Advisory Neighborhood Commission (ANC) 6B (the ANC for the area within which the subject property

is located), the ANC commissioner for the affected Single-Member District and the Ward 6 Councilmember of the filing of the application.

The Board scheduled a public hearing on the application for April 9, 2002. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on February 25, 2002, mailed the applicant, the owners of all property within 200 feet of the subject property, and ANC 6B notice of the hearing. Notice of Hearing was also published in the D. C. *Register* on February __, 2002, at 49 DCR ____. The applicant's affidavit of posting indicates that on March 23, 2002, zoning posters were placed on the subject property in plain view of the public.

Request for Party Status. The Board granted party status to Mr. and Mrs. James R. Jones, who reside at 317 East Capitol Street, S.E., and to Mr. Jim Warlick, a tenant at 313 East Capitol Street, S.E. These parties were represented by counsel. Mr. Timothy and Constance Burr, who reside at 316 A Street, S.E., and Mr. Albert and Margaret Crenshaw, who reside at 321 East Capitol Street, S.E., were granted party status jointly (i.e., as one party) and only one person (Mr. Burr) was permitted to cross examine witnesses. Subsequent to the public hearing, Mr. Warlick was evicted form 313 East Capitol Street and, as a result, his status as a party terminated.

Applicant's Case. Mr. Charles Holliday testified with respect to his proposal to build a three story brick structure with a basement apartment and a garage. He described the history of the project, the prior variances approved by the BZA for the previous owner's substantially larger project, how purchasing the property was conditioned on the prior approvals and his

reliance on statements by officials at the Department of Consumer and Regulatory Affairs that the prior BZA order could be "recharged." He related how he had shown good faith by stopping construction at the request of Mr. and Mrs. Jones. He testified that he had responded to concerns raised by his neighbors, Capitol Hill Restoration Society (CHRS) and ANC 6B by reducing the original proposed depth of the house from 77 feet to 56 feet and reducing the height from 37 feet to 32 feet. Mr. Holliday noted the six letters of support in the record, including the support of the Architect of the Capitol. Mr. Holliday also noted the support for the conceptual design by the Historic Preservation Review Board (HPRB). In response to questions from the Board, Mr. Holliday testified that there are no windows in the proposed plans that face the court (often referred to as a "lightwell") on the 313 East Capitol Street, S.E. property.

The Applicant's architect, Klaus Klatt, described the four (4) iterations of the architectural plans for the subject property (i.e., the (1) plans approved by the BZA in 1991, (2) plans submitted by Mr. Holliday in the application, (3) revised plans submitted with the Pre-Hearing Statement and (4) revised plans submitted at the public hearing). Mr. Klatt submitted revised building plans which reduced the depth of the garage by two (2) feet from 23 to 21 feet and thus reduced the lot occupancy to 60%, effectively negating the need for a lot occupancy variance. Mr. Klatt testified that the size of the lot was unique and that the facade was not as tall as was erroneously depicted in a computer-generated image used by the opposing parties (See Ex. 37). Mr. Klatt also submitted photographs depicting the facades and height of the facades of other houses on the south side of the 300 block of East Capitol Street, S.E. In response to questions from the Board, Mr. Klatt testified that the windows on the 313 East Capitol Street, S.E. property

are obscured by a substantial fire escape and the party wall of this property is buttressed by "stars" which are structural support elements connected to tie-backs (tie rods).

Mr. Holliday and Mr. Klatt both testified with respect to the requirements of an area variance. (See discussion below.)

Public Agency Reports and Memoranda. By memorandum (Ex. 42) dated April 9, 2002, the Office of Planning (OP) recommended approval of the variance noting the relationship of the application to the housing goals in the Ward 6 Element of the Comprehensive Plan and the prior approval by the Board of a previous application by the prior owner of the subject property for three variances (i.e., lot width, lot occupancy and floor area ratio) in connection with a substantially larger residential structure. OP found that the Applicant had satisfactorily met all three parts of the test for a variance and stated that the Applicant had a legal right to build a house on the subject lot. OP's memorandum contained an error concerning the depth of the proposed structure. The Board requested a revised report be submitted for the record.

By memorandum dated April 22, 2002, OP submitted a revised memorandum (Ex. 58) that continues to recommend that the variance application be approved. In its revised memorandum, OP suggests a "compromise" plan that is similar, but not identical, to revised plans submitted by the Applicant subsequent to the public hearing. (For a discussion of the Applicant's revised plans see discussion below.)

ANC Report. The Board waived the seven-day filing deadline of 11 DCMR § 3115.1 to accept the ANC's April 16, 2002, written report. This report replaces the ANC report from its March 12, 2002 meeting. At the public hearing on April 11, 2002, Mr. Calvin Gilbert, ANC 6B Executive Secretary, submitted a letter, dated April 8, 2002, requesting a continuance of the public hearing on the basis that the ANC did not have sufficient time to review the latest revised plans. Mr. Gilbert amended the ANC's position and requested that the record remain open so that the ANC could consider the revised plans at its meeting that same evening and submit a new report.

In its report of April 16, 2002 report, Mr. Kenan P. Jarboe, Chair, ANC 6B states that on April 11, 2002, at a properly noticed meeting with a quorum present, ANC 6B voted unanimously to support the application with two minor conditions. (See Finding of Fact No. 11 for a discussion of these conditions.) The Board notes that, subsequent to the ANC vote, the Applicant submitted revised plans in furtherance of the recommendations of ANC 6B.

Persons in Support of the Application. There were six (6) letters in support of the application. These letters are from The Shakespear Theater (Ex. 30), which owns the lot and building at 311 East Capitol Street, S.E., Mr. Christopher Combs (Ex. 31), who resides at 3 Library Court, S.E., Mr. James Gorab (Ex. 32), who resides at 314 Independence Avenue, S.E., Ms. Marie A. Fennell (Ex. 33), who resides at 509 Independence Avenue, S.E., Mr. Larry Hodgson (Ex. 34), who resides at 506 A Street, S.E., and Alan M. Hantman, AIA, Architect of

the Capitol (Ex. 42). No persons presented oral or written testimony in support of the application.

Parties and Persons in Opposition to the Application. Mrs. Olivia Jones and Mr. Jim Warlick, parties in opposition, testified in opposition to the application. Mrs. Jones testified that she and her husband supported the prior owner's proposal because it was better than the overgrown vacant lot where a homeless person was camping. She also testified that the level of communication with Mr. Holliday was spotty. Mr. Warlick testified that Mr. Holliday's revised plans would reduce the amount of light for 13 windows (as opposed to 19 in the original plans) on the side of 313 East Capitol Street, S.E. and thus impact its value. Mr. Timothy Burr, as a party jointly with Mr. and Mrs. Crenshaw, also testified in opposition. Mr. Burr argued that the proposed plans only provided parking for one car and that he was concerned about access to his garage during construction. No persons testified in opposition to the application.

Closing of the Record. The record closed at the conclusion of the hearing, with the exception that certain documents were allowed to be filed on April 22, 2002. Responses to the documents and findings of fact and conclusions of law were due to be filed on April 29, 2002. The documents to be filed on April 22, 2002 are the revised OP report, the revised ANC report, a response from Mr. and Mrs. Jones and Mr. Warlick regarding the original building footprint, Mrs. Crenshaw's testimony and revised Capitol Hill Restoration Society report. The OP report (Ex.58), ANC report (Ex 55), letter from counsel to Mr. and Mrs. Jones and Mr. Warlick (Ex.56) and letter from Mrs. Crenshaw (Ex. 54) have since been filed in the record.

The Applicant filed revised building plans (Ex.57) on April 22, 2002. These revised plans further reduce the size of the proposed structure by eliminating the rear eighteen (18) feet of the third floor. These revised plans were submitted in response to concerns from the ANC and OP.

FINDINGS OF FACT

1. The subject property is located at 315 East Capitol Street, S.E. (Square 787, Lot 35) in the Capitol Hill neighborhood of Ward 6. The subject property is zoned CAP/R-4.

2. The subject property contains 2,049 square feet and was last improved with three structures, two dwellings and a garage.

3. The subject property has been unimproved for at least 20 years.

4. The proposed building plans include a three-story residence with a basement apartment and a one car garage. The proposed building is a "flat," defined in 11 DCMR § 199.1 as a two-family dwelling.

5. The minimum lot width in an R-4 District for a flat is 18 feet. See 11 DCMR § 401.3. The subject lot is 16 feet wide.

6. Extraordinary or Exceptional Conditions of the Property. The property is unique in that it is exceptionally narrow. It is only 16 feet in width.

7. Practical Difficulties. The inherent narrowness of the lot prevents any development of the lot absent zoning relief.

8. Practical Difficulties. The applicant is unable to acquire additional land in order to widen the subject property.

9. No Substantial Detriment to the Public Good or Zone Plan. The requested relief is two (2) feet, which makes the 16 foot width of the subject property 89% compliant with the 18 foot requirement in an R-4 zone district. A variance of this small extent with not result in a substantial detriment to the public good or the zone plan.

10. The Applicant withdrew its request for a variance from lot occupancy requirements at the public hearing. This was done in furtherance of the revised building plans submitted at the public hearing (Ex. 47) which establish a lot occupancy of 60%. The concerns raised by the parties in opposition to the amount of light and air for 313 East Capitol Street, S.E. are not directly related to a variance for lot width and relate more to a variance for lot occupancy. Nevertheless, such concerns are addressed by the revised plans filed by the Applicant subsequent to the public hearing. These revised plans reduce the third story by eighteen (18) feet so that the third story wall will only extend three (3) feet beyond the party wall. This will result in ample light and air being provided to 313 East Capitol over and above that already provided by the "lightwell" (court) at 313 East Capitol and the 60% lot occupancy at the subject property. The Board also notes that the rear of 313 East Capitol extends eight (8) feet beyond the rear of the subject property.

11. The HPRB granted conceptual approval of the proposed structure at its meeting on February 28, 2002.

12. ANC 6B indicated that on April 9, 2002, at a properly noticed meeting with a quorum present, ANC 6B voted unanimously to support the application with conditions (1) that the proposed construction should be designed in such a way that it will not affect the neighbor's air and light, and (2) that the parapet on the front of the proposed construction be subject to further review by the Historic Preservation Review Board (HPRB).

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

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code § 6-641.07(g)(3) (2001)), to grant variances from the strict application of the Zoning Regulations. The Applicant is seeking a variance pursuant to 11 DCMR § 3103.2 from the minimum lot width requirements under section 401.

1. Under the three-part test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the subject 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) the requested variances will not result in substantial detriment to the public good or

zoning plan. (See Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990).

2. With respect to the first part of the variance test, the Board concludes that the property is unique because of its width. Specifically, it is exceptionally narrow, being only 16 feet in width. Unlike other narrow lots on Capitol Hill that are improved with nonconforming structures, the subject property is unimproved. Expansion options are nonexistant because there is an existing dwelling on the west side of the property and a public alley on the east side of the property. Contrary to the claim made by counsel to Mr. and Mrs. Jones and Mr. Warlick, it is not necessary to demonstrate that the narrow width of the lot is narrow in comparison to other lots. Since the Zoning Regulations require all lots in the R-4 zone to be eighteen (18) feet in width, any lot that is less than eighteen (18) feet in R-4 zone is *ipso facto* a narrow lot that satisfies the variance test. The subject lot is also unusually deep, being 128 feet in depth.

3. With respect to the second part of the variance test, the practical difficulty requirement, the Board concludes that because the lot is narrower than the 18 foot minimum lot width requirement permitted in the R-4 district, the inherent narrowness of lot prevents any development of lot absent zoning relief of the minimum width requirement. This fact would support the more difficult legal burden of proving "undue hardship" for a use variance and easily supports the "practical difficulty" requirement.

The Board rejects the argument made by the counsel to Mr. and Mrs. Jones and Mr. Warlick that this difficulty could be surmounted by applying for an alley closing in order to

widen the lot. This process would not be supported by the counsel's own clients (see Mr. Warlick's testimony) and may or may not be approved. Thus, it is not reasonable to assume the applicant can acquire additional land in order to "widen" the subject site.

4. With regard to the third part of the variance test, the Board concludes that granting the requested relief of two (2') feet from the minimum lot width of 18' required in the CAP/R-4 zone will not substantially impair the public good and substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. First, the Board notes that any adverse effect from any new project must have a substantial effect and must substantially impair the public good and the intent and purpose of the zone plan. Any impact on light and air is not necessarily substantial. Second, the Applicant took reasonable steps to mitigate the impacts of its project on light and air. The Applicant thus scaled back substantially the depth of its proposed building from 77' to 56' and shortened the garage from 23' to 21' feet. These concessions brought the proposed building within the 60% lot occupancy requirement, the intent of which is to provide light and air not only to the owner of the subject property but to the owners of adjoining property as well.

The applicant filed on April 22, 2002 a further revised set of building plans which makes another concession to the property to the east of the subject property. Thus, the light and air already provided by the 60% lot occupancy requirement and existing lightwell will be substantially augmented by the removal of an eighteen (18) foot portion of the third story of the building from three (3') feet beyond the party wall. The revised plans more than adequately

addresses the concerns raised by the parties in opposition at the hearing, by the ANC in its letter of April 16, 2002 and by the Office of Planning in its revised report.

The opposing party to the west (Mr. and Mrs. Jones at 317 East Capitol Street) already benefits from the open space created by the existing 15 feet wide alley which lays between the two properties. This alley is almost as wide as a standard building lot. Thus, there will be no adverse effect on light and air to their property.

5. In reviewing a proposed variance application, the Board is required under D.C. Code § 1-309(d) (2001) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case, the ANC's written reports were revised and culminated in support for the request for a variance with conditions. The Applicant subsequently revised its building plans to address the ANC's concern in a manner which the Board concludes adequately meets the ANC's condition on light and air. The ANC's condition concerning the historic design of the parapet is outside of the scope of the Board's jurisdiction and will be more properly addressed by the HPRB. However, the Board notes that the proposed plans for the subject property are well within the height requirement for the CAP/R-4 zone district.

6. The Board agrees with the majority of recommendations made by the Office of Planning and concludes that such recommendations and its revised report support a grant of the variance. However, the Board finds, as unsupported and unreasonable, the "compromise" recommendation made by OP to eliminate almost 300 square feet of living area on the second floor (i.e., the eighteen feet of depth closest to the rear of the property).

7. The Board concludes, based on the Office of Planning reports, the Findings of Fact and evidence of record, that 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. Therefore, it is hereby **ORDERED** that this Application be **GRANTED**.

VOTE: (Geoffrey H. Griffis, Anne M. Renshaw, Curtis L Etherly, Jr., David W. Levy and James Hannaham).

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

ATTESTED BY:_____

JERRILY R. KRESS

DIRECTOR

FINAL DATE OF ORDER: . _____, 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.

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