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Scheduled for Decision on May 7th

JEANNINE RUSTAD ZIGNER
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April 29, 2002

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D.C. OFFICE OF ZONING
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BY HAND
Ms. Beverley A. Bailey
Office of Zoning
441 Fourth Street, N.W., Room 201
Washington, D.C. 20001

Re: BZA Application No. 16854

Dear Ms. Bailey:

Enclosed you will the proposed Findings of Facts and Order which we have prepared for the above-referenced matter. For your convenience, I have enclosed a diskette containing the order, which is saved as "BZA 16854 Proposed Order".

Should you require any additional information or have any questions regarding the enclosed material, please do not hesitate to contact me.

Thank you for your assistance in this matter.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Jeannine Rustad Zigner

Enclosures (as stated)
cc: Jacques B. DePuy, Esquire (by facsimile; w/encl.)
Mr. and Mrs. James Jones (w/encl.)
Mr. Jim Warlick (w/encl.)
Richard B. Nettler, Esquire

BZA
Case No. 16854
Exhibit No. 65

Board of Zoning Adjustment
District of Columbia
CASE NO.16854
EXHIBIT NO.65

Government of the District of Columbia
Board of Zoning Adjustment

Application No. 16854 of Mr. & Mrs. Charles Holliday, pursuant to 11 D.C.M.R. 3103.2 for two area variances pursuant to Sections 403.2 and 401.3 of the Zoning Regulations from the lot occupancy and minimum lot width requirements, respectively, so as to permit the construction of a two-family dwelling in a CAP/R-4 zone district at 315 East Capitol Street, S.E. (Square 787, Lot 35).

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HEARING DATE: April 9, 2002
DECISION DATE: May 7, 2002

I. SUMMARY OF EVIDENCE:

1. The subject application was filed on January 24, 2002, by Mr. and Mrs. Charles Holliday, for two area variances to allow construction of a two-family dwelling at 315 East Capitol Street, S.E., Square 787, Lot 35. The Property is located in the CAP/R-4 zone district.

2. The R-4 zone district is designed to include those areas developed primarily with row dwellings, but within which there have been substantial numbers of conversions of the dwellings into dwellings for two (2) or more families. The Capitol Interest District (CAP) was established to promote and protect the public health, safety and general welfare of the U.S. Capitol Precinct and the areas adjacent to the U.S. Capitol, in an manner consistent with the goals and mandate of the United States Congress, as set forth in the Act, Master Plan for Future Development of Capitol Grounds and Related Areas (Public Law 94-59, July 25, 1975; 89 *Stat.* 288) and in accordance with the plan submitted to the Congress in accordance with the Act.

3. Matter of right uses in the CAP/R-4 zone district include flats (*i.e.* two-family dwellings), row dwellings, one-family, semi-detached dwellings and one-family dwellings. The CAP/R-4 district permits a maximum height of forty feet (40'), a limit of three (3) stories, and a maximum lot occupancy of sixty percent (60%). The minimum lot width in the R-4 zone district is eighteen feet (18').

4. Under § 3100.1 of the Zoning Regulations (11 D.C.M.R.), the Board may approve an area variance, provided that the applicant meets the conditions specified in §3103.2 of chapter 31 of this title, including that: (1) the property is unique because of its size, shape or topography; (2) the owner would encounter practical difficulties if the Zoning Regulations were strictly applied; and (3) the variance will not cause substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zoning plan.

5. The Property is located in the Capitol Hill Historic District. The surrounding neighborhood is predominantly residential in character, with commercial support areas along the frontage of Massachusetts Avenue between 2nd and 4th Streets, and along both sides Pennsylvania Avenue, S.E. from 2nd Street to17th Street, S.E. Most of the area west of 2nd Street is included in the Capitol complex.

6. The Property, which is currently vacant, is sixteen feet (16') wide and one hundred twenty-eight feet (128') deep. The Property was previously improved with three (3) structures that were demolished some time in the 1960s. The primary structure, the outline of which is evident on the party wall of 313 East Capitol Street, was two-story, single-family dwelling. The second structure, located immediately behind the primary structure, appears to have been two stories on the northern portion of the building and a single story at the rear of the structure. This second structure was stepped back from the property line between the Property and 313 East Capitol Street. The third structure was a one-story accessory building at the rear of the Property.

7. The Property is abutted by a three-story flat to the west (313 East Capitol Street) and a fifteen foot (15') alley to the east. The flat at 313 East Capitol Street is approximately seventy-seven (77') feet deep. The building is constructed to the property line for approximately thirty-five feet (35'), after which it is set back from the 315 East Capitol Street property line by four feet, eight inches (4'8"). This area of the improvements contains approximately nineteen (19) windows, sixteen (16) of which face 315 East Capitol Street and three (3) of which face the rear property line. The property located across the alley from the Property is improved with a two-story frame dwelling.

8. The Property had been the subject of BZA Application No. 15476, pursuant to which area variances from the lot width, floor area ratio and lot occupancy requirements were granted to the previous owners in 1991. However, because the previous owners did not apply for building permits within two years of the date of the order granting the variances, the variances expired. Although they were aware that variances had expired, the Hollidays, who purchased the Property in 2001, applied for and received a building permit based upon the plans submitted in BZA Application No. 15476. The permit was later withdrawn and the applicants filed the instant application.

9. Mr. Holliday, who has no zoning or planning expertise, testified that the Property was unique due to its sixteen foot width (16'). Holliday further asserted that the Property was unique because it was vacant and because of its depth of one hundred twenty-eight feet (128'). Holliday did not testify as to how the Property was unique in comparison with other properties in the area but, instead, relied upon the submissions in his prehearing statement. Holliday also acknowledged that he had never considered seeking to have the adjacent alley closed so as to widen his lot and eliminate the complained of characteristic.

10. The Hollidays' architect, Klause Klatt, who was not qualified as an expert, testified that the Applicants had revised the proposed plans submitted with the application by reducing the depth of the proposed building by twenty-four feet (24').

11. There are many Lots within the Capitol Hill District in the CAP/R-4 zone districts which have lot widths of eighteen feet (18') or less. Likewise, there are many lots within the surrounding area, which have widths of sixteen feet (16') or less. By way of illustration, Lot 28 in Square 787 is only sixteen feet (16') wide and Lots 826, 19, 823, 804 and 21, Square 816, which are located in the north side of the four hundred block East Capitol Street, N.E., are all under sixteen feet (16') wide. Likewise, Lot 17 in Square 817, which is on the south side of the 400 block of East Capitol Street, is less than sixteen feet (16') wide. Lot 825, Square

816 is 16.65 feet wide and Lot 802 is 16.17 feet wide. Lots 15, 16, 17 and 20 in Square 816, which Lots are located on the south side of the 400 block of A Street, N.E., are all under thirteen feet (13') wide.

12. The site of the application is located within the jurisdiction of ANC 6B. ANC 6B, which is automatically a party to this application, submitted a written statement in opposition to the application. ANC 6B's opposition was based upon the applicants' failure to "demonstrate any hardship and the unavoidable negative impact this proposed construction would have on the air and light of the neighboring properties." However, this opposition was based upon the original plans submitted by the applicants with their application. As ANC 6B had not had an opportunity to review the revised building plans, the Board left the record open for ANC 6B to submit its position with regard to the revised plans.

13. By letter dated April 16, 2002, the ANC 6B supported the applicants' right to build on the Property, as well as the applicants' request for a variance from the lot width requirements of the Zoning Regulations. However, this support and recommendation was conditioned upon (1) the proposed building being designed in such a way that it would not affect the neighbors' light and air and (2) that the parapet on the front of the proposed building be subject to further review by the Historic Preservation Review Board.

14. By letter dated March 21, 2002, Mr. and Mrs. James Jones (owners and occupants of 317 East Capitol Street) and Jim Warlick (tenant of 313 East Capitol Street), requested party status in opposition of the application. Mr. Charles Holliday, one of the applicants stipulated that party status be granted to the Mr. and Mrs. Jones and Mr. Warlick. Accordingly, Mr. and Mrs. Jones and Mr. Warlick were granted party status in opposition of the Application.

15. By letter dated March 21, 2002, Constance and Timothy Burr, who reside at 316 A Street, S.E., which is located directly behind 315 East Capitol Street, S.E., applied for party status. The Burr's request for party status was date-stamped received by the Office of Zoning on March 27, 2002, less than fourteen days prior to the scheduled hearing. The Board waived the provisions of Section 3106.2 and accepted the Burr's request for party status.

16. Albert and Margaret Crenshaw, who reside at 321 East Capitol Street, S.E., applied for party status. As the Crenshaw's request for party status indicated that ANC 6B's position reflected their concerns, the Crenshaw's joined in Burr's request for party status.

17. The Burrs and Crenshaws were granted joint party status in opposition of the application.

18. With their prehearing statement, the applicants submitted revised building plans, which reduced the depth of the proposed building from seventy-seven feet (77') to fifty-six feet (56'). Additionally, the depth of the garage was reduced from twenty-two feet (22') to twenty-one feet (21'). These reductions resulted in a proposed lot occupancy of 60%. Accordingly, the applicants withdrew their request for a variance from the lot occupancy requirements of Section 403.2 of the Zoning Regulations.

19. Mrs. Olivia Jones testified in opposition to the application. Mrs. Jones, a twenty-four (24) year resident of Capitol Hill, testified that the Property was not unique. Mrs. Jones pointed to the many lots within the surrounding neighborhood in the R-4 zone district which have lot widths equal to or less than sixteen feet (16'). With regard to the depth of the property, Mrs. Jones pointed out that a deeper Lot was an advantage, as it allows for a larger foot print for improvements to the site. Mrs. Jones testified that she and her husband opposed the application and proposed construction, as it would have a negative impact on the light and air to surrounding properties, including their own. Mrs. Jones testified that the proposed building was incompatible with the surrounding neighborhood. In support of this assertion, Mrs. Jones pointed out that the building was too high, and that the previous improvements to the Property were much shorter. The previous improvements, along with her residence, had created "bookends" to the alley. Additionally, as the previous improvements were much shorter and less deep, they did not impede on the light and air available to surrounding properties.

20. Mr. Warlick testified in opposition to the application based upon the loss of light and air to the residential space he occupied at 313 East Capitol Street that would result from the proposed building. Mr. Warlick illustrated that the proposed building would block the light and air to thirteen (13) windows of 313 East Capitol Street. Mr. Warlick testified that he had previously contracted to purchase 313 East Capitol Street but was unable to close on the purchase. Mr. Warlick explained that once the Hollidays' plans for their property came to light, he was unable to secure financing for the purchase of 313 East Capitol Street and that it had been estimated that the impact of the proposed building would reduce the property value of 313 East Capitol Street by approximately $300,000.00.

21. Mr. Burr testified in opposition to the application. Mr. Burr testified that the previous improvements to the Property extended back approximately forty to forty-five feet (40'-45') from the northern property line and had contained a "dog-leg" that was set back from the property line of 313 East Capitol Street. Mr. Burr testified that this structure had been demolished sometime in the late 1960s. Mr. Burr objected to the application because of the negative impact on light and air available to surrounding properties, including his own.

22. By Memorandum dated April 9, 2002, the Office of Planning recommended that the subject application be approved on the condition that the proposed building be modified so that it did not extend any further than approximately thirty-two feet (32') from the northern building line. This modification was recommended so that the proposed construction would not block the light and air to 313 East Capitol Street. However, because of confusion between the testimony and the report regarding the restriction on the length of the building, the record was left open for the Office of Planning to submit a statement with regard to this issue.

23. By memorandum dated April 22, 2002, the Office of Planning submitted a statement clarifying its position. The Office of Planning recommended that the application be approved, but that the second and third floors of building be restricted to a depth of thirty-eight feet (38') from the northern building line and the first floor be restricted to a depth of fifty-six feet (56') from the northern building line. In the alternative, the Office of Planning recommended that the building be designed as an L-shaped structure set back from the property

on the west. These restrictions were recommended so that the proposed structure would not interfere with the light and air available to adjacent properties.

III. PROPOSED FINDINGS OF FACT:

Based on the evidence of record, the Board finds the following:

24. The Board finds that the subject property is sixteen feet (16') wide by one hundred twenty-eight feet (128') deep.

25. The Board finds that the Hollidays purchased the property with full knowledge that the variances granted in BZA Application No. 15467 had expired and that the property was a nonconforming lot.

26. The Board finds that there are many Lots within the Capitol Hill neighborhood, and in the immediate vicinity of the Property, with widths under sixteen feet (16'), some of which are also bordered by an alley. As such, neither the narrowness of the property nor the narrowness combined with the depth of the lot and the fact that the lot is vacant and adjacent to an alley render the property unique, as required by the Zoning Regulations.

27. Even assuming that the Hollidays have met their burden of proving that the property is unique, the Board finds that the Hollidays have failed to show any practical difficulty resulting from such uniqueness.

28. The Board finds that the proposed construction will have a significant negative impact on the surrounding neighborhood, as the proposed building will severely impede on the light and air available to the surrounding properties.

III. CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the Hollidays are seeking one area variance pursuant to Section 401.3 of the Zoning Regulations from the minimum lot width requirements of the Zoning Regulations so as to allow the construction of a two-family dwelling at 315 East Capitol Street, S.E. (Square 787, Lot 35). Granting such variance requires a showing that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulty upon the owner arising out of some extraordinary or exceptional condition of the property, such as exceptional narrowness, shallowness, shape, or topographical conditions. D.C. Code § 5-424 (g)(3). Further, the Board must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose, and integrity of the Zoning Regulations and Map.

The Board is thus empowered to grant an area variance where it finds three conditions:

(1) The property is unique because, *inter alia*, of its size, shape or topography;

(2) The owner would encounter practical difficulties if the Zoning Regulations were strictly applied;

(3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zoning plan.

Roumel v. District of Columbia Bd. of Zoning, 417 A.2d 405, 408 (D.C. 1980); *see also Association For The Preservation Of 1700 Block Of N Street, N.W. v. Board of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978)(the applicant must demonstrate that compliance with the area restriction is unduly burdensome and the practical difficulties are unique to the property).

Reviewing the criteria for an area variance recently, the Court, in *Capital Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 941-942 (D.C. 1987), stated that the

> threshold requirement to show that the property is unique with respect to the hardship or difficulty asserted as grounds for the variance means the property owner must present proof that "the circumstances which create the hardship *uniquely* affect the *petitioner's property* * * * ." *Taylor, supra* note 6, 308 A.2d at 234 (emphasis in original).

Id.; see also Russell v. Board of Zoning Adjustment, supra, 402 A.2d at 1235 (the requirement that the practical difficulty be caused by the uniqueness of the property "insures relief for problems peculiarly related to the * * * land or structure, and not shared by other property in the neighborhood, thus avoiding a de facto amendment of zoning laws.").

The Hollidays must demonstrate that compliance with the area restrictions is unduly burdensome and the practical difficulties are unique to the site. In finding an extraordinary or exceptional condition, the Board may rely upon a confluence of factors.

Narrow lot widths, such as that existing at the property, are common on Capitol Hill. Likewise, narrow and deep lots are not uncommon in the surrounding neighborhood. In light of the number of lots which have similar characteristics to the subject property, any variance provided would amount to an amendment of the zoning map since it would require similar relief for all other lots. The fact that the property is vacant has no impact on this premise. In similar circumstances involving an area variance request on Capitol Hill, the Court of Appeals, in *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987), concluded that the Board is without authority to grant the area variance relief requested. *See also Myrick v. District of Columbia Bd. of Zoning Adjustment*, 577 A.2d 757 (D.C. 1990). Consequently, the Hollidays have failed to meet the requirement that the property is unique.

Because the proposed building would severely impact the light and air available to the neighboring properties, the Hollidays have failed to prove that the requested variance can be granted without harm to the public good.

The Board accorded ANC 6B the "great weight" to which it is entitled. The Board agrees with the ANC that the proposed building will have a negative impact on the light and air available to the neighboring properties

The Board concludes that the applicants have failed to meet their burden. It is hereby **ORDERED** that the application be **DENIED**.

VOTE: 5-0 (Georffrey Griffis, Anne Renshaw, David Levy, Curtis Etherly, Jr. and James Hannaham in opposition to the application)

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

FINAL DATE OF ORDER:

EXHIBIT 65

FROM

CASE 16854

HAS A DISKETTE

PLEASE SEE AT OFFICE