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D.C. BOARD OF ZONING
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BY HAND DELIVERY
Chairperson Geoffrey Griffis
Government of the District of Columbia
Board of Zoning Adjustment
441 4th Street, N.W., Suite 220
Washington, DC 20001

January 27, 2003

RE: Application No. 16962—Mr. & Mrs. Aislee Smith, pursuant to 11 DCMR 3103.2, for a variance from the lot occupancy requirements under Section 403, a variance from the rear yard requirements under Section 404, a variance from the nonconforming structure provisions under subsection 2001.3 to allow the construction of a three story addition to a row dwelling, in the R-4 District at 2304 1st Street, N.W., (Square 3125, Lot 75).

Findings of Fact and Conclusions of Law

1. The District of Columbia Zoning Regulations apply to all privately owned real property within the District of Columbia and the Applicant owns private property located within the District of Columbia. Therefore, the District of Columbia Zoning Regulations apply to the Applicant's property.

2. The Applicant, who owns a house in the R-4 District, requests a variance that would extend the rear portion of the house and create a lot occupancy of 79%. This expansion is in direct degradation of the District of Columbia Municipal Regulations. 11 DCMR Section 403.2 specifically provides, in pertinent part, that no structure including the accessory building shall occupy the lot in the R-4 District beyond the maximum lot

BZA
Case No. 16962
Exhibit No. 40

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EXHIBIT NO.40

occupancy rate of 60%. The Applicant seeks a variance that would permit lot occupancy well above the maximum lot occupancy of 60% in the R-4 District.

3. 11 DCMR Section 404.1 provides that a rear yard with a minimum depth of twenty (20) feet shall be provided for each structure located in a R-4 District. Here, the Applicant seeks to expand the rear portion of the house to the public alley way and allow no room for a rear yard in direct degradation of the District of Columbia Municipal Regulations.

4. Applicant seeks a variance permitting outward building of twenty (20) feet at a height of four stories from grade. Grade level currently equates to ground level here. This will effectively eliminate any rear yard. In Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment, 1974, 320 A.2d 291, it was determined that a variance may not be granted, even to alleviate a bona fide serious hardship to an owner, if granting the variance would adversely affect the surrounding neighborhood. By permitting the Applicant a variance, the Opponents and other neighbors will have their sunlight, view, and air flow blocked by the Applicant's outward and upward building. The Applicant, Opponents, and nearby neighbors purchased their houses without obstruction in the rear yard area. The Opponents would like to continue living without obstruction in the rear yard area caused by the Applicant.

5. The Applicants show no exceptional narrowness or shape of their property that would create practical difficulties and undue hardship, under 11 DCMR Section 3103.02, if the zoning regulations are strictly interpreted and applied. The Applicant states the lot is unique in that its width is 17.65 feet, less than the required 18 feet, and its lot area of 1,632 square feet, is less than the required lot size of 1,800 square feet. Therefore, the Applicant states the variance should be granted. Several houses in the area are on equally small lots, and the Applicant has sufficient space currently to make alternative, although more costly plans for improving the house in accordance with D.C. Code 1981 Section 5-424(g)(3). Myrick v. District of Columbia Bd. of Zoning Adjustments, 1990, 577 A.2d 757. A plat submitted by the Applicant shows that other lots are identical in size. In fact, several lots are labeled as being 1,632 or 1,633 square feet (See Exhibit No. 20 for Case No. 16962). This shows there is no individualized exception that exists to create practical

difficulties and undue hardship on the Applicant. The Applicant's lot is identical in the amount of square footage to neighboring lots.

6. The Applicant requests a variance exception for non-conforming structures under 11 DCMR Section 2001.3. However, 11 DCMR Section 2001.3 provides for enlargements or additions to a structure only if the following conditions are met. 11 DCMR Section 2001.3 provides, in pertinent part, the structure shall conform to percentage of lot occupancy requirements and not create any new nonconformity of structure and addition combined. Here, the Applicant would exceed the maximum lot occupancy rate of 60% and create, through additions, a lot occupancy rate of 79%. In addition, this new addition and outward building would create a new nonconformity of structure in that it would exceed the maximum lot occupancy rate and infringe on the twenty (20) feet of minimum depth required in each R-4 District. In addition, the final plans may exceed height requirement limits in the R-4 District.

7. Under 11 DCMR 3104 the Board is authorized under § 8 of the Zoning Act, D.C. Code, 2001 Ed. §-641.07(g)(2) to grant special exceptions where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

8. Granting the applicants a variance would be inconsistent with the harmony, general intent and purpose of the Zoning Regulations and Zoning Maps. The general intent and purpose of the Zoning Regulations and Zoning Maps is to prevent over utilization of lots within the R-4 District. Towards this end, a plan was devised that requires a maximum lot occupancy rate of 60% and a minimum depth in the rear yard of twenty (20) feet. This creates harmony and uniformity within the neighborhood or community. However, granting this variance is inconsistent with this intent in that it allows the Applicant an occupancy rate of 79% and permits the Applicant to have no rear yard in contravention and degradation to the general intent and purpose of the Zoning Regulations and Zoning Maps. Hence, permitting this outward building by the Applicant would severely and drastically undermine the integrity of the Zoning Regulations and Zoning Maps. In addition, it would adversely affect the Opponents' use of their property in accordance with the Zoning Regulations and Zoning Map in that they would

experience over utilization of lot space by the neighboring lot owner and their sunlight, air flow, and view would be dramatically blocked.

WHEREFORE, for the reasons stated, and any other the Zoning Board may consider or deem necessary, the Opponents respectfully request the Applicant's request for a variance be denied.

Respectfully submitted,



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cc: All copies by First Class Mail

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