BAKER BOTTS L.L.P.

WARNER
1299 PENNSYLVANIA AVE., NW
WASHINGTON, DC
20004-2400
202.639.7700
FAX 202.639.7890

AUSTIN
BAKU
DALLAS
HOUSTON
LONDON
MOSCOW
NEW YORK
RIYADH
WASHINGTON

STEVEN R. HUNSICKER
202-639-7715
E-Mail: steve.hunsicker@bakerbotts.com
Facsimile: 202-585-1031

June 10, 2003

BY HAND DELIVERY

Mr. Geoffrey Griffis
Chairperson
Board of Zoning Adjustments
441 Fourth Street, N.W., Room 201
Washington, D.C. 20001

Re: BZA Application No. 16970
National Child Research Center ("NCRC")
3209 Highland Place, N.W.,
Square 2072, Lot 30 (the "Property")

D.C. OFFICE OF ZONING
2003 JUN 10 A 11:39

OPPOSITION OF STEVEN R. HUNSICKER, SALLIE R. BECKNER AND R. BRUCE BECKNER, GAYLORD NEELY AND LINDA BADAMI, AND HENRY P. LITTLE TO NCRC REQUEST FOR AREA VARIANCE RELIEF UNDER SECTION 3203.3

The following Opposition is submitted with respect to certain relief requested by NCRC in BZA Application No. 16970, as amended. This Opposition addresses one key issue: whether the variance relief needed from Section 3203.3 in order to permit NCRC's proposed construction and operation of a second principal structure on a single record lot is a use variance or an area variance. See Feb. 25, 2003 transcript at pp. 266, 267.

SUMMARY OF ARGUMENT

In its May 6, 2003 Supplemental Statement, NCRC states that the variance relief required for this purpose is an area variance, reasoning only that "[s]ince a child development center is a permitted use, the requested relief is an area variance." Supplemental Statement at 9. This superficial analysis is wrong. NCRC seeks a variance from Section 3202.3 that would result in a use that is ordinarily prohibited thereunder, i.e., the use of a single lot for the construction of a second principal structure. Because the variance sought would be to "permit[] a use other than that prescribed by the [Section 3202.3] zoning ordinance", the variance at issue is a use variance. Associated for Preservation of 1700 Block of N Street v. Board of Zoning Adjustment, 384 A.2d 674, 677 (D.C. 1978) (hereinafter cited as "1700 Block of N Street").

BZA
Case No. 16970
Exhibit No. 187

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.187

ARGUMENT

1. NCRC Requires A Use Variance Under Applicable Precedent.

As NCRC notes at page 8 of its Supplemental Statement, the D.C. Court of Appeals explained the difference between an area variance and a use variance in 1700 Block of N Street:

> The distinction between a use variance and an area variance is that the former "permits a use other than that prescribed by the zoning ordinance" whereas an "area variance has no relation to change of use. It is primarily a grant to erect, alter or use a structure for a permitted use in a manner other than that prescribed by the ordinance." (citing 2 Anderson, American Law of Zoning § 14.07 (1968), quoting in part *Alumni Control Board v. Lincoln*, 179 Neb. 194, 137 N.W. 2d 800, 802 (1965)).

384 A.2d at 677. NCRC, however, ignores the use that is prescribed by the zoning ordinance at issue, Section 3203.3, and instead seeks to divert attention to the different zoning ordinance, Section 205, which permits a child development center/nursery school as a special exception.

But it is not the special exception regulation that is at issue. What is at issue is the principal structure requirements of Section 3203.3. Under Section 3203.3, with certain exceptions not relevant here, a building permit may not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot. A variance to construct a second principal structure on a lot, or an addition to a second principal structure on a lot, permits a use other than that prescribed by Section 3203.3 and is therefore a use variance. This was the holding of the Board in its Order issued July 27, 2001 in Application No. 16693 of Carroll O. Little, 48 D.C. Reg. 6969. The Carroll O. Little decision is attached as Exhibit "A" for your convenient reference.

The Carroll O. Little decision is directly applicable here. In that case, the Applicant sought a variance from Section 3202.3 to allow the construction of an addition to one of two principal one-family dwellings on a single lot of record. The Board noted that while the Applicant characterized the proposed repair and reconstruction of the second dwelling as an addition, "the extent of required repairs and reconstruction for all practical purposes amounts to the construction of a new building." Significantly, the Board rejected the theory and the result that NCRC urges here. Even though a single family dwelling is a more characteristic use of a lot

in an R-1-B zone than a child development center permitted under special exception relief, the Board's analysis was not premised on the observation that the use of a lot in an R-1-B zone for a residential dwelling is a permitted use. In other words, the Board did not reason, to paraphrase NCRC here, that "since a single family dwelling is a permitted use, the requested relief is an area variance." Instead, consistent with applicable precedent, the Board focused on the use prescribed by the principal structure requirements of Section 3202.3:

> Since a variance from Section 3202.3 would result in a use ordinarily prohibited in all zone districts, the use of a single lot for the construction of an addition to one of two principal structures on the lot, the applicant must meet the higher burden of proof established for use variances.

Id., citing Wolf v. District of Columbia Bd. of Zoning Adjustment, 397 A.2d 936, 941-42 (D.C. 1979).

The requirement of a use variance also comports with authority from outside of the District of Columbia. Delaware is one of two states that have been recognized as having zoning regulations "substantially identical" to those of the District of Columbia. Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 539 (D.C. 1972). In Jenny v. Durham, 707 A.2d 752 (Del. Super. 1997), the court considered an application to build two residences in an area in which a "steep slope" ordinance prohibited the development of single-family homes. The court ruled:

> [T]he Ordinance restricts the allowable uses for this type of land, and [the] . . . application to build two homes is for a use variance, as [it] seeks approval of 'an otherwise proscribed use.'

Id. at 757, citations omitted.

In Jenny v. Durham, as in this Board's ruling in Carroll O. Little, the Delaware court recognized that the proposed construction represented a use of property that was proscribed or other than as prescribed by the ordinance at issue. Accordingly, a use variance was required.

2. The Higher Burden Of Proof For A Use Variance Is Appropriate Because NCRC's Proposal Would Adversely Affect The Character Of The Neighborhood.

It is well recognized that the higher burden of proof that attends a use variance is applied because a use variance affects the character of the district, whereas the lower burden that attends an area variance, relating to restrictions such as set-back or minimum lot requirements, is applied because an area variance does not affect the character of the district. See Palmer v.

Board of Zoning Adjustment, 287 A.2d 535, 541 (D.C. 1972). See also Rathkopf, The Law of Zoning and Planning § 58:4 (2003).

In Carroll O. Little, this Board recognized that the use of a single lot for a single principal structure was fundamental to the Zoning Regulations: "The requirement that each principal structure must be located on a single lot provides the basis for the application of the Zoning Regulations." Citing Norman Williams, Jr. and John M. Taylor, 1 American Planning Law §16.12 (1988 Rev.) ("In a zoning ordinance, the normal unit of control is a lot . . . ."). The Board correctly recognized that a variance from the fundamental principal structure requirements of the Zoning Regulations would affect the character of the district and thereby justifies the application of the higher burden of proof established for a use variance. By comparison, an area variance has a lower burden of proof and relates to "restrictions such as side yard, rear yard, frontage, set back or minimum lot requirements," which do not alter the character of the zoned district. Wolf, 397 A.2d at 941, quoting Palmer, 287 A.2d at 541. An area variance "has no relation to a change of use" (1700 Block of N Street, 384 A.2d at 677) and therefore is simply inapplicable to NCRC's proposed change in use of its single lot for the construction of a second principal structure.

If anything, the NCRC Application presents a stronger case for requiring a use variance than was present in Carroll O. Little. In Carroll O. Little, the question was whether a second house would be permitted on a single lot in a residential R-1-B district of single-family houses. There was no inconsistency in the fundamental residential use of the property, as compared to neighboring properties that conformed to zoning regulations; nor would there have been a substantial change in appearance of the neighborhood had the application been granted. In contrast, the application here is not only for a second principal structure but for a structure that is different both in appearance and intended use compared to the structures currently on the NCRC property and neighboring properties. The present principal structure on the NCRC lot is a large Victorian residence that was built intended for use as a house and which remains residential in character and appearance despite NCRC's use of it for classrooms and offices. By contrast, the proposed second principal structure would not be a house, but would be designed and built intended for functional use as a classroom building easily twice as large as the nearby residences on Ordway Street. Thus, NCRC's proposal would directly affect the character of the neighborhood by the construction of a commercial-scale classroom building in a neighborhood that, heretofore, has consisted exclusively of houses.

Moreover, unlike the grant of the request in Carroll O. Little (which, at most, would have resulted in two houses close together), the requested relief here will create a substantial change in the *appearance* of the lot occupied by NCRC. It will transform the NCRC property from one on which a large house occupies a large lot (of which there at least four other examples in the immediate vicinity on Highland Place) to a mini-campus, with two very large

principal buildings and two ancillary buildings, all joined together by a network of walkways and play structures. The elimination of trees and open space, the excavation and grading of sloping terrain, and the construction and operation of the large second principal structure clearly pose much more significant impacts on the character of a residential district than the proposed addition to a single-family residential dwelling at issue in the Carroll O. Little proceeding. In addition, the large second principal structure proposed by NCRC would bring additional populations of children, staff and visitors to the neighborhood and thereby add to the existing, dangerous neighborhood traffic conditions that have been identified by DDOT in this proceeding.

In assessing the impact on the character of the neighborhood, the Board should recognize that NCRC has irresponsibly grown enrollment and staff populations to current levels without benefit of prior assessment of the safety impacts by the BZA or DDOT. In 1963, the BZA denied NCRC's application for a special exception to increase enrollment from 70 to a maximum of 80 children and to build a new building to serve the expanded enrollment. See Ex. R to the NCRC application. In denying NCRC's application, the BZA order cited, among other things, traffic impacts in the neighborhood that already existed in 1963 and objections that the proposed new building was not compatible with existing homes in the area. The same effects on the character of the area that were recognized by the BZA in 1963 – traffic impacts and the construction of a large commercial structure in a residential area – are threatened today by NCRC's proposal to use its single lot for the construction of a large second principal structure in order to accommodate increased populations of children, staff and visitors. In fact, the threatened effects on the character of the area are much more significant today than in 1963, given NCRC's unchecked growth in enrollment since 1963.[1]

In sum, under applicable precedent, NCRC requires a use variance from Section 3203.3 in order to use a single lot for the construction of a second principal structure. The higher burden of proof that NCRC must meet to obtain a use variance is well justified by the effects on

[1] NCRC now tries to belittle the significance of this Board's action in 1963. But the fact remains that from an enrollment of 70 in 1963, NCRC has increased enrollment some 250% to current levels of approximately 170 without DDOT or BZA review of the traffic impact or safety implications associated with such expansion. In 1998, when such an assessment should have been made, NCRC misled DDOT into thinking that enrollment was then 108 and would not increase when in fact enrollment had already grown to close to current levels. DDOT's understanding of NCRC's enrollment in 1998 is demonstrated by the 1998 DDOT report itself, which is attached to DDOT's February 5, 2003 Memorandum in this proceeding. NCRC's irresponsible growth and failure to impose effective traffic mitigation measures have led to increased traffic congestion, which DDOT now properly describes as "dangerous."

the character of the neighborhood that would result from NCRC's proposed expansion and construction of a second principal structure.

CONCLUSION

The special exception provisions of Section 205 of the Regulations cited by NCRC are irrelevant to the category of variance required from Section 3202.3 to construct a second principal structure on a single lot. NCRC requires a variance from Section 3202.3 to permit a use other than that prescribed by this zoning ordinance, i.e., the use of a single lot for the construction of a second principal structure. Under applicable precedent from this and other jurisdictions, NCRC must meet the higher burden of proof established for a use variance to permit a use that is other than that prescribed by the principal structure requirements of Section 3203.3.

Very truly yours,

Steven R. Hunsicker
3083 Ordway St., N.W.
Washington, D.C. 20008

Sallie R. Beckner and R. Bruce Beckner
3225 Highland Place, N.W.
Washington, D.C. 20008

Gaylord Neely and Linda Badami by SRH
3207 Highland Place, N.W.
Washington, D.C. 20008

Henry P. Little by SRH
Henry P. Little
1336 Shrader Street
San Francisco, CA 94117
(owner of residence at 3220 Ordway St., N.W.)

Enclosure

cc: Service List (w/enclosure)

1 of 1 DOCUMENT

DISTRICT OF COLUMBIA REGISTER

ISSUE: Volume 48, Number 30

ISSUE DATE: July 27, 2001

SUBJECT: BOARDS, COMMISSIONS, AND AGENCIES

AGENCY: GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

48 D.C. REG. 6969

Star pagination is in accord with DCRGST hardcopy pagination.
To view the next page, type .np* and ENTER
To view a specific page, enter p* and the page number. E.G. p*1.

Application No. 16693 of Carroll O. Little, pursuant to 11 DCMR § 3103.2, for a variance from subsection 3202.3, to allow the construction of a second story addition where more than one principal building exists on a single lot of record in an R-1-B District at premises 904 Ridge Road, S.E. (Square 5383, Lots 60 and 61).
HEARING DATE: April 24, 2001
DECISION DATE: April 24, 2001
DECISION AND ORDER

Carroll O. **Little,** the owner of Lots 60 and 61 in Square 5383, filed an application with the Board of Zoning Adjustment on January 12, 2001, for a variance from 11 DCMR § 3202.3 to allow the construction of an addition to one of two principal buildings on a single lot of record. The existing buildings are located on Lot 60 in Square 5383, with street addresses of 900 and 904 Ridge Road, S.E., in an R-1-B Zone District. The application is accompanied by a memorandum from the Zoning Administrator dated November 14, 2000, certifying the required zoning relief. After a public hearing, the Board denied the application.
PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated February 7, 2001, the Office of Zoning advised the D.C. Office of Planning; Advisory Neighborhood Commission (ANC) 7E, the ANC for the area within which the property that is the subject of the application is located; the ANC Commissioner for the affected single-member district; and the Ward 7 Councilmember of the filing of the application.

The Board scheduled a public hearing on the application for April 24, 2001. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on February 21, 2001, mailed the applicant, the owners of all property within 200 feet of the subject property, and ANC 7E notice of the hearing. Notice of hearing was also published in the *D.C. Register* on February 23, 2001, at 48 DCR 1691. The applicant's affidavit of posting indicates that on March 28, 2001, a zoning poster was placed on the front of the subject building, in plain view of the public.

Applicant's Case. The applicant, Carroll O. **Little,** stated that he was seeking a variance to reconstruct an existing one-family dwelling on a record lot containing two one-family **[*6970]** dwellings in order to provide housing for family members. He submitted photographs of the existing dwellings, along with architectural plans for the proposed addition.

D.C. Office of Planning (OP) Report. After reviewing the property's zoning, the proposed addition, and the legal tests for a variance, OP, in its report dated April 16, 2001, recommended that the Board deny the application. John Moore, development review specialist, presented the report at the hearing.

ANC Report. In its report dated April 13, 2001, ANC 7E indicates that on April 10, 2001, at a duly-noticed meeting with a quorum present, the ANC was in agreement with the requested variance. The ANC states that it does not have any issues with the proposed addition.

Persons in Support of the Application. Wilks and Juanita Clemont, nearby neighbors, submitted a letter supporting the application.

Persons in Opposition to the Application. There are no persons in opposition to the application.

Closing of the Record. The record closed at the conclusion of the public hearing.

Decision. After the hearing, the Board, voting 3-0-2, with two members not present, not voting, denied the application.

FINDINGS OF FACT

The Subject Property and Proposed Addition

1. The subject property is Lot 60 in Square 5382. The applicant also owns the adjacent lot to the west, Lot 61. Lots 60 and 61 are located in an R-1-B District.

2. The subject property is located in the Benning Heights Neighborhood. The neighborhood is generally bounded by Benning Road to the north, the northern property line of Fort Dupont Park to the south, Southern Avenue to the east, and Texas Avenue to the west. It consists predominantly of one-family detached and semi-detached residential dwellings, with garden apartments and row dwellings concentrated in the northeastern portion of the neighborhood.

3. Lot 60 is trapezoidal in shape. It is located at the intersection of Ridge Road, S.E., and Burns Street, S.E. There is a 15-foot wide unimproved public alley that runs along the eastern lot line and intersects Ridge Road.

4. Lot 60 is developed with two principal buildings, both of which are one-family dwellings. The applicant resides in the dwelling located closest to the intersection of Ridge Road and Burns Street, "Building No. 1," with a street address of 900 Ridge Road, S.E. The proposed addition would be constructed on the smaller dwelling to the east, "Building No. 2," which is **[*6971]** closest to the intersection of Ridge Road and the public alley, with a street address of 904 Ridge Road.

5. Building No. 2, which is presently vacant, was constructed in the 1920s as a dwelling unit. It is in poor condition and unsafe for human habitation.

6. Lot 60 has a lot area of 7,836.8 square feet and a lot width of 117.49 feet. The lot occupancy, with both buildings, is 21.95 percent.

7. Building No. 1 has a rear yard with an average depth of 14 feet, while the distance from Building No. 2 to the rear property line ranges from 5.85 feet to 8.35 feet.

8. The two buildings are six feet apart. Building No. 1 has an eight-foot wide side yard to the west, while the side yard for Building No. 2 to the east varies from two to six feet.

9. The applicant seeks to repair and reconstruct Building No. 2 by building a new foundation wall between existing brick piers, replacing the floors and walls, and adding a new second floor and roof. The proposed building would have the same footprint as the existing building. While characterized as an addition, the extent of required repairs and reconstruction for all practical purposes amounts to the construction of a new building.

Unique or Exceptional Conditions of the Property

10. Under 11 DCMR § 401.3, the minimum lot area in an R-1-B District is 5,000 square feet and the minimum lot width is 50 feet. The subject lot, which exceeds the minimum lot area and lot width requirements for the R-1-B District, does not qualify as an exceptionally narrow, shallow, or uniquely shaped property.

11. There is no exceptional topographic condition or other extraordinary or exceptional situation or condition of the property.

Undue Hardship

12. The applicant could construct a second one-family dwelling on the adjacent lot, Lot 61, either by (1) combining Lots 60 and 61 into a single lot of record and then subdividing the lot into two theoretical lots under 11 DCMR § 2516, which permits the construction of two principal buildings on a single lot; or, (2) pursuing variance relief to permit construction on Lot 61, a substandard lot with a width of only 25 feet.

13. The Board finds that strict application of the Zoning Regulations would not result in undue hardship upon the owner since the applicant is able to use Lot 60 for a one-family dwelling and there are two alternatives available that would allow the applicant to construct a second one-family dwelling by using the adjacent property, which he owns. **[*6972]**

Impact on the Public Good

14. Due to the close proximity of the two dwellings, the proposed addition to Building No. 2 would restrict air circulation between the two buildings and block light from reaching Building No. 1.

Impact on the Zone Plan

15. The District of Columbia Generalized Land Use Map identifies the area of the subject property as within the Low-Density Residential Land Use Category. The predominant use in this category consists of one-family detached and semi-detached dwellings.

16. As stated in the Zoning Regulations at 11 DCMR § 200.1, the R-1 Districts are "designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those projects."

17. Since the proposed addition would be constructed on the same footprint as Building No. 2, it would have an extremely short rear yard for an R-1 District, 5.85 to 8.36 feet compared to the required minimum under § 404.1 of 25 feet.

18. A "side yard" is defined in § 199.1 as "a yard between any portion of a building or other structure and the adjacent side lot line, extending for the full depth of the building or structure. Under § 405.9, the minimum width of each side yard is eight feet. Under § 405.8, in the case of a building existing before May 12, 1958, with a side yard less than eight feet, an extension or addition may be made to the building provided the width of the side yard is not decreased and provided further, the width of the side yard must be at least five feet wide.

19. Since Building No. 2 only has a side yard ranging from two to six feet along the east side and no side yard along the west side, the proposed construction would not meet the side yard requirements of the R-1 District.

20. The requested variance would perpetuate the existing rear yard and side yard nonconformity.

21. The added height and floor area would adversely affect the low-density character of the R-1 District by overcrowding the southeast corner of the lot.

CONCLUSIONS OF LAW AND OPINION

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 § 5-424(g)(3) (1994)), to grant variances from the strict application of the Zoning Regulations. Carroll O. **Little** is seeking a variance from 11 **[*6973]** DCMR § 3202.3 to permit the construction of an addition to a principal building, a one-family dwelling, that is located on the same lot as another principal building, also a one-family dwelling, in an R-1-B District. The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met.

The Zoning Regulations in 11 DCMR § 3202.3 n1 specify, with certain exceptions that are not relevant here, that a building permit may not be issued for the proposed construction of any principal structure or any addition to a principal structure unless the land for the proposed construction has been divided so that each structure will be on a separate lot of record. n2 The requirement that each principal structure be located on a single lot provides the basis for the application of the Zoning Regulations. *See* Norman Williams, Jr. & John M. Taylor, 1 *American Planning Law* § 16.12 (1988 Rev.) ("In a zoning ordinance, the normal unit of control is a lot . . . ."). For example, the area restrictions in chapter 4 of the Zoning Regulations, applicable to Residence Districts, all relate to the placement and size of a building on a single lot.

n1 Subsection 3202.3 states:

Except as provided in § 2516 [relating to theoretical lot subdivision] and the Act of Congress of June 28, 1898 (30 Stat. 520, chapter 519, § 5) [D.C. Code § 7-114 (1995), relating to lots encumbered by highway plans], a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record; except buildings and structures related to a fixed right-of-way mass transit system approved by the Council of the District of Columbia. Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure.

n2 The term "lot" is defined in 11 DCMR § 199.1 as:
the land bounded by definite lines that, when occupied or to be occupied by a building or structure and accessory buildings, includes the open spaces required under this title. A lot may or many not be the land so recorded on the records of the Surveyor of the District of Columbia.
A "lot of record" is defined in § 199.1 as "a lot recorded on the records of the Surveyor of the District of Columbia."

Since a variance from § 3202.3 would result in a use ordinarily prohibited in all zone districts, the use of a single lot for the construction of an addition to one of two principal structures on the lot, the applicant must meet the higher burden of proof established for use variances. *See Wolf v. District of Columbia Bd. of Zoning Adjustment, 397 A.2d 936, 941-42 (D.C. 1979).* Under the three-prong test for use variances set out in 11 DCMR § 3103.2, the applicant must demonstrate that (1) as a result of exceptional narrowness, shallowness, or shape of property or by reason of exceptional topographic conditions or another extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter undue hardship if § 3202.3 is strictly applied; and (3) the requested variance will not result in substantial detriment to the public good or the zone plan. *See Wolf, 397 A.2d at 941.*

In reviewing a proposed variance to determine whether it meets the three-prong test, the Board is required under D.C. Code § 5-412.4 to give "great weight" to OP recommendations. **[*6974]** The Board has carefully considered OP's report and, as explained in this decision, finds its recommendation to deny the application persuasive.

The Board is also required under D.C. Code § 1-261(d) (1999) to give "great weight" to the affected ANC's recommendations. Under § 3(d)(3)(A)-(B) of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, 47 DCR 5519 (2000)),

(A) The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity. Great weight requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission's issues and concerns.

(B) In all cases the government entity is required to articulate its decision in writing. The written rationale of the decision shall articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances. In so doing, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission. Further, the government entity is required to support its position on the record.

In this case, the ANC, while indicating that it was "in agreement" with the requested variance, did not identify any specific issues and concerns relating to the application. The Board is therefore unable to make specific findings and conclusions with respect to the ANC's issues and concerns. As explained in this decision, the Board has determined that the requested variance does not meet the legal criteria for variance relief.

Based on the above findings of fact, the Board concludes that the applicant has not met his burden of proof. First, the property is not unusually narrow or shallow. To the contrary, it has a lot area and width that substantially exceed the minimum requirements for the R-1 Districts. While the property is trapezoidal in shape, there is no evidence that would support a conclusion that the property is unique by virtue of its shape or that by reason of its shape, the strict application of the Zoning Regulations would result in an undue hardship on the owner. There are no other extraordinary or exceptional conditions of the property.

Second, the existing dwelling is in an advanced state of deterioration, such that the proposed repairs and addition essentially amount to new construction. Under the Zoning Regulations, the applicant has available two alternatives that would allow the construction of a new dwelling on the adjacent lot, which he owns: (1) the combination of the Lots 60 and 61 into a single lot of record, with subdivision of the lot pursuant to 11 DCMR § 2516 into two theoretical lots to permit two principal buildings on a single lot; or (2) a variance to permit the **[*6975]** construction on Lot 61, a substandard lot. n3 The strict application of the Zoning Regulations therefore would not result in undue hardship to the owner, since the owner is able to use his property for a one-family dwelling and has available two alternative means of constructing a second principal dwelling.

n3 See *Russell v. District of Columbia Board of Zoning Adjustment, 402 A.2d 1231 (D.C. 1979),* relating to variance relief for substandard lots.

Third, the proposed addition would result in the substantial detriment to the public interest and the zone plan. Since it would be built on the footprint of the existing building, the proposed building would continue to intrude into the required minimum side yard and rear yard. Given the close proximity of the two principal buildings, the added height and floor area of the proposed addition would exacerbate the congested appearance of the southeast corner of Lot 60. The added height would also result in substantial detriment to the existing one-family dwelling on the lot by obstructing light and air circulation.

For the reasons stated above, the Board concludes the applicant has failed to meet his burden of proof. It is hereby **ORDERED** that the application is **DENIED.**

VOTE: 3--0--2 (John G. Parsons, Susan Morgan Hinton, and Anne M. Renshaw, to deny; Sheila Cross Reid and the third mayoral appointee 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.

FINAL DATE OF ORDER: July 12, 2001

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME EFFECTIVE 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.