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June 10, 2003

BY HAND

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

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

CLEVELAND PARK NEIGHBORS BRIEF REGARDING SECTION 3202.3, PARKING REQUIREMENTS AND EXPANSION OF A NONCONFORMITY OF THE MAIN BUILDING

In accordance with the Board's request at the conclusion of the May 6, 2003 hearing for briefing on the issues of: (1) the nature of the variance pursuant to section 3202.3 of the zoning regulations; (2) whether parking is required for the proposed new building; and (3) the need for additional relief to allow the expansion of a nonconformity of the main building, namely, the expansion of this four-story building, the Cleveland Park Neighbors submit the following:[1]

[1] This brief shall solely address these legal issues. For a complete argument as to why NCRC cannot meet its burden of proof for the requested relief, see the Cleveland Park Neighbor's opposition dated April 25, 2003.

BZA
Case No. 16970
Exhibit No. 192

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.192A1

Word 45645037.1

A. The Proposed Variance from Section 3202.3 of the Zoning Regulations is a Use Variance.

The variance relief sought by the National Child Research Center, so as to construct another principal building on a single subdivided lot is in the nature of a use variance. As demonstrated below, this conclusion is consistent with the case law, a decision of the Board binding on it in this case and the "legislative" history of the regulation at issue.

1. Use v. Area Variance Dichotomy.

A use variance "permits a use other than that prescribed by the zoning regulations" whereas an "area variance has no relation to change of use but, rather 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." *Ass'n for Preservation of 1700 Block of N Street v. Board of Zoning Adjustment*, 384 A.2d 674 (D.C. 1978). A use variance is required by an applicant when the applicant seeks to use a structure or property in a manner other than that prescribed by the zoning regulations for that site, as distinct from a use which is permitted by special exception or otherwise. *See Ass'n for Preservation of 1700 Block of N Street v. Board of Zoning Adjustment*, 384 A.2d 674 (D.C. 1978). In *1700 Block of N Street*, the Court stated that

> [t]he distinction between a use variance and an area variance is that the former "'permits a use other than that prescribed by the zoning regulations' 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.'" [footnotes and citations omitted].

Indeed, even where the requested variance is a hybrid, the court has still applied the stricter burden of proof applicable to a use variance. *See Taylor v. Board of Zoning Adjustment*, 308 A.2d 230, 233 (D.C. 1973).

In the leading case of *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972), the Court interpreted D.C. Code §§ 5-420, 5-424(g)(3) and the corresponding provision of the zoning regulations, 11 D.C.M.R. § 3103.2, which permits the Board to grant variances, pursuant to the following:

> Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this Act would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial determent to the public good and without substantially impairing the intent, purpose, and integrity of the zoning plan as embodied in the zoning regulations and map.

The above regulation sets up separate statutory requisites to the granting of variances, i.e., a showing of "practical difficulties" or "undue hardship". In *Palmer*, the court adopted the dichotomy recognized in other jurisdictions between area variances and use variances, applying the statutory requisite of "practical difficulties" to a showing of the former, and applying the separate statutory requisite of "undue hardship" to a showing of the latter. *Id.* at 541. Because "an area variance, relating to restrictions such as side yard, rear yard, frontage, set-back or minimum lot requirements, does not alter the

character of the zoned district, whereas a use variance seeks a use ordinarily prohibited in the particular district", the court held that a "more stringent showing is warranted with respect to the more drastic relief inherent in a use variance". *Id.* at 541.

The principal rationale for the different standards applicable to the two types of variances is that an area variance does not affect the neighborhood or adjacent landowners with the maintenance of an incompatible use of the subject property. *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). That is, an area variance does not alter the character of the zoned district (i.e., it does not deviate from the uses permitted in that district), whereas a use variance seeks a use ordinarily prohibited in the particular district. *Monaco v. Board of Zoning Adjustment*, 409 A.2d 1067, 1072 n.17 (D.C. 1979); *1700 Block of N Street, N.W.*, 384 A.2d at 677; *Palmer*, 287 A.2d at 541.

2. Legislative History of Section 3202.3.

In 1958, when the present zoning structure was created, a zoning advisory panel was also created to study modifications to the regulations to facilitate public housing. Exhibit 1 at Report of the Zoning Advisory Council, p. 2. The 11-member panel (composed of District of Columbia & Federal officials and a representative of the Office of the Corporation Counsel) completed its work in 1963 and determined that the adoption of a uniform "Building Lot Control" regulation would be the best means of accomplishing this objective. *Id.* According to the Zoning Advisory Council, it was explained that the adoption of section 8103.3 (now section 3202.3) would "provide the most drastic policy change during the more than four decades of zoning control in the

District of Columbia." *Id.* It was explained that "the proposal would prohibit (as a matter of right) the issuance of all future permits to erect, construct, convert or alter any building which is not now located upon, or which could not be legally be converted to a sub-divided lot of record." *Id.* This was aimed at stopping the filing of building plans with "outline surveys",[2] some of which might include land used by others or even owned by others. *Id.* at p. 3. The proposal had been the subject of study and review since 1920 but, based on a now-discredited opinion of the Corporation Counsel, was thought to violate the fifth amendment.

The Zoning Commission adopted the provision now at issue and, at the same time, adopted the theoretical subdivision provision because the lot of record requirement then required review by the National Capital Planning Commission, which was considered "laborious and time-consuming", and separate water and sewer connections. Exhibit 1 at Testimony of Mr. Henry F. Davenport p. 3. So, a property owner seeking to construct another principal building on a single subdivided lot of record was left with two options, either obtain a theoretical lot under § 2516 or seek the creation of a substandard lot of record and obtain an area variance from the side yard, rear yard and width requirements. *See* Exhibit 1. In the absence of doing either, like the applicant here, you would need a use variance.

[2] Outline surveys were merely "outlines" of land along with the metes and bounds of the property. As such, were not recordable in the Office of the Surveyor as a recorded subdivision. *Id.*

The conclusion that a use variance is required is also consistent with decisions involving other regulations such as the prohibition against construction of a residence on an alley lot, even if in a residential district.

3. Previous Decisions of the Board Support that the Requested Variance is a Use Variance.

Determinations of whether the variance at issue is one of area or use are often made on an *ad hoc*, case by case basis by the Board, in the absence of clear direction from the Zoning Commission or prior rulings. *Monaco*, 409 A.2d at 1072. The differences between the two kinds of variances are essentially one of degree and are to be determined on the basis of the facts and circumstances of each case. *Capitol Hill Restoration Society v. BZA*, 534 A.2d 939, 941-42 (D.C. 1987); *Carliner v. BZA*, 412 A.2d 52, 53 (D.C. 1980); *Monaco*, 409 A.2d at 1072. As mentioned above, a use variance is required by an applicant when the applicant seeks to use a structure **or property** in a manner other than that prescribed by the Zoning Regulations for that site, as distinct from a use which is permitted by special exception or otherwise.[3] *See 1700 Block of N Street*, 384 A.2d 674 (D.C. 1978)(emphasis added).

[3] It is irrelevant, for this discussion, whether a child development center is allowed through a special exception (*see* NCRC's Supplemental Statement at 9), since the issue of use in this analysis is whether the regulations permit the construction and/or occupancy of two principal structures on a single lot of record in a residential district. Although two principal buildings may be allowed on a single lot of record in a residential district by way of § 2516 of the zoning regulations, NCRC has not sought to subdivide the Property into such lots and thus that issue is also not before the Board. Moreover, to the extent that there can be any ambiguity left in the type of variance required pursuant to § 3202.3, given the drastic change the additional primary building will impose on the surrounding area, such ambiguity must be resolved by requiring the application of the stricter test of a use variance. *See Taylor at* 233.

a. BZA Application No. 16693 of Carroll O. Little – 2001.

The best guidance for determining whether a variance sought is a use or area variance is previously decided variance cases in the jurisdiction in which the land at issue is located. A. Rathkopf, 3 The Law of Zoning and Planning § 58.4 (1997). In its recent decision in *Application No. 16693 of Carroll O. Little*, the Board held that a variance from § 3202.3 is a use variance. *See* Exhibit 2a.

In BZA Application No. 16693, the Board stated:

> Since a variance from § 3202.3 would result in a use ordinarily prohibited in all zone districts, [*i.e.*] the use of a single lot for the construction of an addition to one of two principal structures on the lot, the application 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). (Emphasis added.)

See also Jenney v. Durham, 707 A.2d 752, (Del. 1997)(under Steep Slope Ordinance restricting allowable use of land, applicant's request to build two houses where ordinance would allow only one required a use variance); *Matthew v. Smith*, 707 S.W.2d 411 (Mo. 1986)(variance for a residential lot containing two separate houses upon a tract of land zoned for single-family use was a use variance, to which the "undue burden" standard applied). Finding a variance pursuant to § 3202.3 to be a use variance, the Board went on to state that:

> Under the three-prong test for use variances set out in 11 D.C.M.R. § 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.

The property at issue in the *Little* case was improved with two structures – a single-family dwelling, occupied by the applicant/owner, and a small residential structure constructed in the 1920s, which was in poor condition and unsafe for human habitation. *See* Exhibit 2b (Office of Planning Report, BZA Case No. 16693). The applicant proposed to make "repairs" to the second structure by building new foundation walls between the existing brick piers and building a new second floor and roof on the new structure. The Office of Planning, in recommending against approval of the use variance, noted that there were two alternative solutions which did not require relief pursuant to section 3202.3 of the zoning regulations. *Id.* at p. 6. The first was to raze the structure, seek a theoretical subdivision of that portion of the property on which it had been located with an adjoining lot owned by the applicant and build a new structure on the combined lots. *Id.* The second option was to raze the structure and build a new structure on the adjoining lot, seeking an area variance from the street frontage requirements. *Id.*

To the extent the Board may have received in this case conflicting advice regarding the characterization of the relief sought by the NCRC as requiring a use variance, the Board is bound by its prior administrative decisions that such relief requires

a use variance under section 3202.3 of the zoning regulations. *See District of Columbia v. Fisher*, 258 A.2d 456, 458 (D.C. 1969). S*ee also Upper Georgia Avenue Planning Committee v. Alcoholic Beverage Control Board*, 500 A.2d 987, 993 n.7 *citing Food Marketing Institute v. ICC*, 587 F.2d 1285 (D.D.C. 1978)(wherein the agency's departure from its precedent led to a remand from the Court of Appeals); *Draude v. Board of Zoning Adjustment*, 527 A.2d 1242, 1252 (D.C. 1987)(given that the BZA had, in past cases, accepted that adverse effect on light and air to neighboring property could constitute a reason for denying a variance under the zoning regulations, it was bound to count in the effect on light and air in special exception cases); *French v. Board of Zoning Adjustment*, 658 A.2d 1023, 1033 (D.C. 1995)(Board upheld where it's interpretation of section 217.1 of the zoning regulations was consistent with its interpretation of that provision in four (4) prior cases).

Just as there were less intrusive options available in the *Little* application, NCRC has less obtrusive options, namely seeking the creation of another record lot or a special exception to create a theoretical lot in order to construct the proposed new structure on the new lot.

b. The *Little* Application Distinguished.

There have been two (2) other cases for relief pursuant to section 3202.3: (1) *Application No. 14583 of Edward A. Markowitz* (1987); and (2) *Application No. 16352 of Benjamin Johns* (1998 Bench Decision & Summary Order). Although a quick read of the decisions in the cases may lead one to believe that an area variance was granted, a review of the record reveals that these cases actually involved theoretical subdivisions. *See*

Exhibits 3 and 4. Confusing the true relief in these cases is the fact that each applicant received erroneous zoning memoranda from the then-Chief of the Zoning Review Branch of DCRA, Edgar T. Nunley. *See* Exhibits 3b and 4b. Having received such instructions, the applicants were left with no choice but to apply for the relief set forth in the memoranda.

That the *Markowitz* case involves a "theoretical lot" is illustrated by the fact that a theoretical subdivision had previously been granted by the Board in *Application No. 13178*. *See* Exhibit 3c. Subsequently, two (2) assessment and taxation lots were created. *See* Exhibit 3h; *see also* Exhibit 3c at ¶ 6 (noting that *Application No. 13178* approved "an application to allow for no more than two theoretical building sites"). The property in question, which had been carved out of the property subject to *Application No. 14583*, was land-locked and the relief was from the requirement prohibiting construction a dwelling on an A&T lot that could not be converted into a lot of record due to the lack of street frontage.[4] Furthermore, it was pointed out that, without the requested relief, the owner would be unable to use his property in any manner consistent with the Zoning Regulations. *See* Exhibits 3d & 3f. That is, the applicant would have suffered an *undue burden*, in that he would have been deprived of all beneficial use of his property – a use variance standard.

[4] It is noteworthy that the theoretical lot provisions set forth in section 2516 were intended to address this exact problem – that is, the ability to develop interior properties lacking street frontage. *See* Exhibit 1 at Report of the Zoning Advisory Council at p. 7; and August 2, 1963 Notice of Hearing.

Application No. 16352 likewise involved a theoretical lot. This case involved a historic landmark property. *See* Exhibit 4a. The property in question had been subdivided into two (2) A&T lots. *See* Exhibit 4e. However, because the property was controlled by a conservation easement, albeit one which authorized the construction of an additional house but which precluded the creation of two lots of record as distinct from theoretical lots, and because of its status as an historic landmark, as distinct from being merely a contributing building in a historic district, the applicant could not subdivide the property into two (2) lots of record. Accordingly, relief was sought to construct an additional structure on the vacant A&T Lot. *See* Exhibit 4a-f.

Also distinguishing these two cases from the *Little* application is the fact that there was no opposition in these cases and no one challenged the nature of the relief sought. *Compare* Exhibit 2a *with* Exhibits 3a and 4a

The Board's decision in the *Little* case is, as already stated, consistent with case law and a reading of the zoning regulations. These earlier cases do not change this conclusion. And, there have not been any changes in §3202.3 or any other relevant sections of the zoning regulations since 2001 that would warrant revisiting the issue of whether variances pursuant to that section are anything other than use variances. Finally, unlike the *Little* opinion, neither of these earlier opinions explains in the detail the rational of the test to be applied. *See Davidson v. Board of Zoning Adjustment*, 617 A.2d 977, 983 (D.C. 1992)(reliance on previous Board case was misplaced where the issue at hand was not raised or dealt with by the Board in a substantive manner in the previous case); *see also Draude*, 527 A.2d at 1253 (the Board is required "make clear why it

adopts a particular approach in a given situation and be alert to the possible problems of inconsistency").

c. Density Cases Also Support that the Requested Variance is a Use Variance.

In the District of Columbia, density variances have been held to be hybrid variances and, as such, the more stringent test for use variances applies. *See Taylor v. Board of Zoning Adjustment*, 308 A.2d 230 (D.C. 1973); *see Broadway, Laguna, Vallejo Ass'n v. Board of Permit Appeals of the City and County of San Francisco*, 427 P.2d 810 (Cal. 1967)(In applying the "undue hardship" standard, the court noted that density controls – namely controls on FAR – had "become a cornerstone of contemporary building codes" and, as such, the applicants request for relief from the density controls was not a request for relief from "a purely technical requirement of an insignificant ordinance".). In *Taylor*, the applicant sought to build twenty-seven (27) row houses rather than the permitted ten (10) detached houses. The applicant argued that the lesser area variance test should apply, as he was seeking only to vary height and side-yard requirements. Contrary to these assertions, the Court noted that the applicant was seeking to almost triple the allowable density, a result "which would drastically alter the character of the zoned district." *Taylor*, 308 A.2d at 233. Consequently, the Court upheld the Board's application of the use variance standards to the requested relief (*Id.*), and the Board should do so here.

B. As the Proposed New Building Cannot be a "Contributing Building" to the Cleveland Park Historic District, Parking is Required for the New Building.

NCRC has asserted that the report of the Historic Preservation Division ("HPD") of the Office of Planning supports a finding that the proposed new building will be a contributing building to the Cleveland Park Historic District and, therefore, will be eligible for a waiver from parking pursuant to § 2100.5 of the zoning regulations. Specifically, NCRC points out that HPD opined that the "Carriage House" will be "generally compatible in its height, orientation, rooflines, and materials' use with the residential character of Ordway Street and the historic district." Exhibit 5. NCRC also relies upon HPD's recommendation, adopted by the Historic Preservation Review Board ("HPRB"), that the design of the proposed additions be approved "as consistent with the purposes of the preservation act."[5] *Id.* The new construction proposed by NCRC are not "contributing buildings" to the historic district and thus NCRC cannot avail itself of the waiver provided in § 2100.5 of the zoning regulations.

In order to determine whether a building or structure is a contributing building to its historic district, one must first look to the period of significance of the historic district in relation to the construction of the building or structure. Exhibit 6. In accordance with the *National Register Bulletin*, properties can be eligible for the National Register if they are associated with events important in the defined historic context. *Id.* Mere association with historic events is insufficient; the association must be significant as well. *Id.*

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[5] NCRC consistently omits the remainder of this recommendation, which states that "*this approval should not be construed to constitute an endorsement for the necessary zoning variances or zoning relief.*" Exhibit 1 (emphasis added).

Period of Significance is defined in the *National Register* as:

> the length of time when a property was associated with important events, activities, or persons, or attained the characteristics which qualify it for National Register listing. Period of significance usually begins with the date when significant activities or events began giving the property its historic significance.

Id. Generally, fifty years is used as the closing date for periods of significance. *Id.* In order for events or activities occurring within the last fifty (50) years to justify extending a period of significance beyond this limitation, the events or activities must be "exceptionally important." *Id.*

It is well settled in the District of Columbia that buildings and structures in historic districts constructed outside the period of significance cannot be contributing buildings. *Id., citing* HPA Nos. 96-214 and 96-342; HPA No. 00-31; HPA No. 01-149; and HPA No. 02-223. In HPA No. 01-149, in finding that the building in question, the Kew Gardens, constructed in 1922, did not contribute to the Georgetown Historic District, the Mayor's Agent stated that:

> The 'period of significance' for a historic district is defined as the length of time when a property was associated with important events, activities, or persons, or attained the characteristics which qualify it for National Register listing. For an individual property to contribute to the historic district *it must have been constructed during the period of significance*, or, if not, it must be shown to have an important association with the events which formed the basis for designating the area an historic district.

Exhibit 6, attachment d at p. 6 (emphasis added). The period of significance for the Cleveland Park Historic District is 1880-1941. *Id.* at attachment f. Thus, although the

HPRB may have found that the proposed new buildings or structures to NCRC's property to be "consistent" or "compatible" with the surrounding historic district, such a finding does not support NCRC's assertion that the new buildings or structures can be characterized as contributing buildings to the historic district, as such terms were intended to be used in the zoning regulations. Exhibit 6. Instead, because the new buildings or structures have yet to be constructed and the period of significance ended more than sixty (60) years ago, they could not be considered contributing buildings. *Id.*

Section 2100.5 of the zoning regulations provides that:

> No additional parking spaces shall be required for a historic landmark or a building or structure located in a historic district which is certified by the state historic preservation officer *as contributing* to the character of that historic district.

11 D.C.M.R. § 2100.5 (emphasis added). Clearly, section 2100.5, by its terms, only applies to historic landmarks or contributing buildings to historic districts. *Id.*; Exhibit 6. Because the new buildings or structures are to be constructed outside the period of significance for the Cleveland Park Historic District, they will not be contributing buildings and, therefore, will not be eligible for the parking waiver in accordance with section 2100.5 of the zoning regulations.

Additionally, section 2100.7 of the zoning regulations provides that, in the event that the intensity of use of a building or structure existing before May 12, 1958 is increased by more than twenty-five percent (25%) of the aggregate, parking must be provided for the expanded use. 11 D.C.M.R. §2100.7. This provision also requires the

variance relief claimed neessary by the Cleveland Park Neighbors and the Office of Planning.

C. Nonconformity of the Main Building.

1. According to NCRC's Plans Submitted to the Board, the Existing Main Building is a Four-Story Building and, therefore, is a Nonconforming Building.

Buildings in the R-1-B zone district are restricted to a height of forty feet (40') and three (3) stories. A "story" is defined as:

> The space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing. The number of stories shall be counted at the point from which the height of the building is measured.
>
> For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars, stair or elevator penthouses, or other roof structures; Provided, that the total area of all roof structures located above the top story shall not exceed one-third (1/3) of the total roof area.

11 D.C.M.R. § 199.1. The definition of a story does not exclude from inclusion in the definition a portion of a building which is properly defined as a basement. Moreover, the definition of a basement makes it clear that a basement is to be counted as a story. Specifically, the definition of basement provides that a basement is "that portion of a *story* partly below grade, the ceiling of which is four feet (4 ft.) or more above the adjacent finished grade. 11 D.C.M.R. § 199.1 (emphasis added). The terms "basement" and "cellar" are defined terms of art in the zoning context. *Id.*

NCRC's plans clearly indicate that the main building currently consists of three (3) stories and a "basement".[6] As such, the existing building is, in fact, a four (4) story building – the basement being the fourth story of the building.

A "nonconforming structure" is

> a structure, lawfully existing at the time of this title or any amendment to this title became effective, which does not conform to all provisions of this title or the amendment, or other than use, parking, loading, and roof structure requirements. Regulatory standards that create nonconformity of structures include, but are not limited to, height of building, lot area, width of lot, floor area ration, lot occupancy, yard, court and residential recreation space requirements.

11 D.C.M.R. § 199.1. As a four story building, the main building is a nonconforming structure in accordance with this definition. Section 2001.3 of the zoning regulations prohibits additions to nonconforming structures unless:

> (a) The structure shall conform to the percentage of lot occupancy requirements; and
> (b) The addition or enlargement itself shall conform to use and structure requirements; and
> (c) The addition or enlargement itself shall not increase or extend any existing, nonconforming aspect of the structure, and shall not create any new nonconformity of structure and addition combined.

11 D.C.M.R. § 2001.3.

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[6] Unfortunately, NCRC has failed to provide any scaled elevations of the existing main building Therefore, one must presume, given that NCRC's architect has been qualified as an expert in architecture and has testified that he is familiar with the zoning regulations, that the use of the term "basement" was not arbitrary but, rather, was intentional to convey that the "Ground Level" is, in fact, more than four feet (4') above grade at the front of the building

In the instant matter, the proposed addition extends a nonconforming aspect of the main building in that it extends the fourth floor of the building. As such, relief is required to extend this nonconformity in the addition.

CONCLUSION

As set forth above, the relief sought pursuant to section 3202.3 of the zoning regulations is a use variance. The Board is obligated to follow its decision in the application of Carroll O. Little, BZA Application No. 16693 (2001), which previously determined this issue. However, regardless of whether the Board determines the variance is a use or area variance, NCRC cannot meet the test for either relief.

With regard to the proposed new carriage house, although its design may be compatible with the Cleveland Park Historic District, as new, stand alone construction, the building cannot constitute a contributing building District. As such, parking is required for the carriage house.

Finally, as the addition to the main building expands a nonconformity of that building – namely the existence of four stories – relief is required for such expansion.

Given that NCRC cannot meet the standards for any of the requested relief (as well as the relief from the expansion of the nonconformity of the main building), the Cleveland Park Neighbors respectfully request that the Board deny the instant application.

Sincerely,

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

Richard B. Nettler
Jeannine Rustad Zigner

cc: Neighbors
Mr. Denzel Noble (by hand)
Office of Planning, Attention Arthur Jackson (by hand)
ANC 3C (by hand; c/o Nancy MacWood)
Gaylord Neely & Linda Badami (by hand)
Sallie R. Beckner & R. Bruce Beckner (by hand)
Steven R. Hunsicker (by hand)
Henry P. Little (by hand)
"The Friends of NCRC" (by hand)
Katharine Marshall (by hand)
Maureen E. Dwyer (by hand)

Exhibit List

1. Legislative History

2a. Decision & Order for BZA Application No. 16693 of Carroll O. Little (2001)
b. OP report in BZA Application No. 16693
c. Application No. 16693

3a. Decision & Order for BZA Application No. 14583 of Edward A. Markowitz (1987)
b. Zoning Memorandum dated December 31, 1986
c. Decision & Order for BZA Application No. 13178 of Michael Minkoff (1980)
d. Applicant's Statement of Reasons
e. Application
f. Proposed Order submitted by the Applicant
g. Letter from Rock Creek Glen Community Association dated April 20, 1987 with attached covenants
h. Surveyor Plat

4a. Decision and Order for BZA Application No. 165352 of Benjamin Johns (1998 Bench Decision & Summary Order)
b. Zoning Memorandum dated March 31, 1998
c. Application with attached Statement of Existing and Intended Uses and HPRB Staff Report
d. Outline if Slide Presentation
e. Baist Maps for Property
f. Correspondence re: covenant with neighbors with covenant attached

5. HPD Report

6. Affidavit of Emily Hotaling Eig
a. National Register Bulliten excerpts
b. HPA No. 96-214 & 96-342
c. HPA No. 00-31
d. HPA No. 01-149
e. HPA No. 02-223
f. Period of Significance

DISTRICT OF COLUMBIA

ZONING COMMISSION

PUBLIC HEARING

The Zoning Commission met, pursuant to notice, at 10:00 a.m., Room 500, District Building, 14th and Pennsylvania Avenue, Northwest, Washington, D. C., Wednesday, September 4, 1963.

MEMBERS PRESENT:

General C. M. Duke, Chairman

Commissioner Walter N. Tobriner

Commissioner John B. Duncan

J. George Stewart

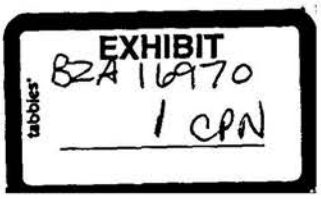
MEMBERS ABSENT:

Conrad L. Wirth

ALSO PRESENT:

Henry G. Ashton, Associate Planner

WEDNESDAY -- SEPTEMBER 4, 1963



P R O C E E D I N G S 10:00 AM

CHAIRMAN DUKE: The public hearing will come to order. As ... District of Columbia Zoning Commission and representing them all ... certainly want to welcome you all and thank you for coming down to ... hearing. The matters that we want to discuss today were advertised ... the Evening Star on the 2nd of August of this year and the District ... Columbia Register on the 19th of August, 1963.

I'd also like to note in passing that the properties proposed for requested rezoning have been posted with signs by the Commission to provide the greatest possible notification to the public that these ...ions are under consideration. Now for purposes of conducting the ...ring this morning the zoning proposals on the amendments will be ...rd for first and then the map cases. They will be heard in the order ...which they were advertised and the Zoning Commission's secretary, Mr. ...ton will introduce into the record the reports of the Zoning Advisory ...ncil and the Citizen's Zoning Advisory Committee.

Mr. Ashton, you may proceed.

MR. HENRY G. ASHTON: The proposed amendments read as follows:

(MR. ASHTON READ INSERT # 1 WHICH APPEARS ON THE FOLLOWING PAGE OF THE TRANSCRIPT.)

August 2, 1963

Notice is hereby given that a public hearing will be held by the Zoning ssion in Room 500, District Building, beginning at 10:00 a.m., Wednesday, ber 4, 1963, for the purpose of considering proposed amendments to oning Regulations and Map as provided by the Zoning Act (Public 34, 75th Congress), the general summary of which reads as follows:

PROPOSED AMENDMENTS TO ZONING REGULATIONS

Add a new Section 7516 to read:

"Section 7516 - Exceptions to Building Lot Control"

"7516.1 This Section is designed to permit two or more principal dings or structures to be erected on a single subdivided lot.

7516.2 The number of principal buildings permitted herunder shall not imited, provided the applicant for a permit to build submits satisory evidence that all requirements of these regulations such as use, nt, bulk and open spaces around each building as provided by Paragraphs 8103.2 8103.3 will be complied with.

7516.3 Where a principal building has no street frontage, as determined ding the subdivided lot into theoretical building sites for each al building, the front of such building shall be the side upon which prinicpal entrance is located. Open space in front of such entrance l be provided equivalent to the required rear yard in the district in h such building is located; but a rear yard shall be required.

7516.31 Where not in conflict with the Act of June 1, 1910, (36 Stat as amended, the height of a building hereunder, in all districts, shall easured from the finished grade at the middle of the front of the building.

7516.4 The provisions of this Section shall also apply to buildings ted under the terms and conditions of Section 3307."

In Section 8103 amend paragraph 8103.3 to read:

"8103.3 Hereafter, except as provided in Section 7516, a building shall not be issued for the proposed erection, construction, conver- or alteration of any principal structure, unless the land therefor been subdivided so that each structure shall be on a separate lot of ord. Any combination of commercial occupancies separated in their irety, erected or maintained in single ownership, shall be considered one structure. "

Paragraph 8103.3 now reads:

"8103.3 Each structure, any combination of residential structures ted as a single building in Section 3307, or any combination of al structures having division walls from the ground up or from the floor up operated as a single establishment, shall be on a separate tinct lot of record.

INSERT # 1
DATE September 3, 1963
NAME

REPORT OF THE ZONING ADVISORY COUNCIL

September 4, 1963 HEARING

(1) Add a new Section 7516 to read:

"Section 7516 - Exceptions to Building Lot Control"

"7516.1 This Section is designed to permit two or more principal buildings or structures to be erected on a single subdivided lot.

7516.2 The number of principal buildings permitted hereunder shall not be limited, provided the applicant for a permit to build submits satisfactory evidence that all requirements of these regulations such as use, height, bulk and open spaces around each building as provided by Paragraphs 8103.2 and 8103.3 will be complied with.

7516.3 Where a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the front of such building shall be the side upon which the principal entrance is located. Open space in front of such entrance shall be provided equivalent to the required rear yard in the district in which such building is located; but a rear yard shall be required.

7516.31 Where not in conflict with the Act of June 1, 1910, (36 Stat 452) as amended, the height of a building hereunder, in all districts, shall be measured from the finished grade at the middle of the front of the building.

7516.4 The provisions of this Section shall also apply to buildings erected under the terms and conditions of Section 3307."

(2) In Section 8103 amend paragraph 8103.3 to read:

"8103.3 Hereafter, except as provided in Section 7516, a building permit shall not be issued for the proposed erection, construction, conversion, or alteration of any principal structure, unless the land therefor has been subdivided so that each structure shall be on a separate lot of record. Any combination of commercial occupancies separated in their entirety, erected or maintained in single ownership, shall be considered as one structure."

Paragraph 8103.3 now reads:

"8103.3 Each structure, any combination of residential structures authorized as a single building in Section 3307, or any combination of commercial structures having division walls from the ground up or from the lowest floor up operated as a single establishment, shall be on a separate and distinct lot of record.

Repeal paragraph 8103.4 and renumber remaining paragraphs under Section 8103.

Paragraph 8103.4 now reads:

"8103.4 In the case of a lot with an area of an acre or more the quirement set forth in paragraph 8103.3 may be modified upon submission satisfactory evidence that the requirements of these regulations will be mplied with."

Underscoring denotes words defined)

On December 3, 1959, the Commissioners appointed an eleven man committee mposed of D. C. and Federal officials (including a representative of the ffice of the Corporation Counsel) to study modifications in Building and ning Regulations to facilitate public housing.

The Committee has now completed its work submitting to the Commissioners ts report and recommendations of which all of the proposed Zoning Regulation hanges here before the Commission are a part. At the outset it was the of the Committee that the adoption of a uniform "Building Lot Control" ould be the best means of accomplishing basic objectives. Consequently oth Zoning and Building Code changes (the latter to be handled separately y the Commissioners) deal exclusively with this subject.

The proposed change of Paragraph 8103.3 will be discussed first, ecause in it lies the key to possible legal difficulty and to the erable practicability of all proposals, both Building and Zoning Codes. lthough its purpose seems well hidden (unintentionally) and it is also thout benefit of a declaration of legislative intent, the amendment would rovide probably the most drastic policy change during the more than four ecades of zoning control in the District of Columbia. The proposal would rohibit (as a matter of right) the issuance of all future permits to erect, nstruct, convert or alter any building which is not now located upon, hich could not legally be converted to a sub-divided lot of record. , the creation or sale of properties by outline survey in circumvention ard, coverage, bulk and minimum lot size requirements as provided by

zoning rules would be effectively prohibited by direct regulation; but with effective "escape" through BZA procedure under variation.

It should be noted that the Zoning Regulations under Paragraph 1302.2 already provide theoretically adequate safeguards against violation of minimum standards. This paragraph reads:

"1302.2 Where a lot is hereafter divided, the division shall be effected in such manner as not to violate provision of these regulations for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio, percentage of lot occupancy, parking spaces, or loading berths applicable to said lot or any lot created."

In practice however, Paragraph 1302.2 is ineffective, since anyone may legally file a building plat which is an outline survey of the land to be improved and include within its "outlines" land which has already been used as required area or yard for another building. In fact an applicant may not even own some of the land he proposes to use. Since an outline survey cannot be recorded in the Office of the Surveyor as a recorded subdivision but can be recorded only as a metes and bounds transaction by date, the engineer charged with checking building plans for zoning compliance cannot know positively that every transaction involving the "site area" has been reviewed. Many such transactions are multiple, some with apparent intent to create confusion, and perhaps to defraud.

At this point it should be stressed that metes and bounds sales will not be prohibited by the proposed change; but only that such transactions may not be made the basis for permits to improve the land with building.

These proposals are not new and have been the subject of periodical study and review dating as far back as 1920 when zoning was first established for the District of Columbia. Until the current review, however, the next most recent full study dates back to about 1935 following which the

Corporation Counsel expressed the opinion that this type of lot control was in violation of the fifth amendment to the Constitution. It must be noted however, that:-

(a) Basic changes at that time involved the Building Code, with only passing reference to zoning possibilities; and,

(b) The Board of Zoning Adjustment, often referred to as the "safety valve" of the zoning process, had not yet been created; and

(c) Basic changes proposed today are primarily zoning and secondarily Building Code; and,

(d) A principal basis for the opinion of the Corporation Counsel is the case of MacFarland v. Miller (18 Appeals D. C. 554) decided in 1901. Many lawyers believe this decision is now outmoded.

Assuming approval of proposed regulations, the procedure would then be:-

(a) For acreage or other virgin land:- The owner applies to the Surveyor for a subdivision, which after review of Surveyor's Office records and approval by the Zoning Administrator for compliance with minimum standards, the property is subdivided into lots of record. Building permits will then issue for specific buildings after additional zoning and structural checks with no basic problems then or later.

(b) For conversion of either an <u>improved</u> or an <u>unimproved</u> lot created by outline survey to one of record:- Precisely the same checks as in (a)

above except that here officials will look into past metes and bounds sales to determine whether any part of the lot is required space for adjoining improved properties. If so the subdivision will be rejected if minimum standards are not otherwise met; but the owner if he desires to build, then has recourse to BZA. If BZA authorizes a specific building on the site, it will direct a subdivision of the remainder of the lot, if such subdivision does not violate other laws or regulations.

(c) For conversion of either an improved or unimproved lot created by outline survey to one of record, where in advance such lot is known per se to be substandard:- Automatic rejection of subdivision; but with recourse to BZA for a new building, or, for conversion, alteration, or addition, as the case may be. BZA will also cause checks to be made under (b) above before entering any approving order which order will also require subdivision subject to limitations noted in (b) above.

There will be no onus of nonconformance attached to any lot previously surveyed by outline, since an owner who does not wish to build or otherwise improve his property may continue to use it without penalty. Neither will the BZA workload be increased materially, because this Board already adjudicates each and every case involving erections, including additions, on those types of substandard properties discussed in this report. The only increase will involve alterations, and a few types of conversions.

This change has been long overdue and in the public interest, and subject to further anaylsis by the Corporation Counsel, the Council urges adoption.

The National Capital Housing Authority which is represented on the Commissioners' Committee, has been the prime mover in the effort to cut "red tape" and facilitate construction of public housing. The new proposed Section 7515 is designed to do this; but we must again reiterate our opinion that the amendment to paragraph 3103.3 is mandatory if the procedure advocated here is to be placed on a sound and practicable basis.

The amendment would not be limited to public housing, since it should prove advantageous to the development of any large complex of buildings, such as large-scale planned developments under Article 75, schools, colleges, other institutions, and occasionally to the individual lot owner who may be faced with the problem of developing excessively large interior property with only minimal street frontage.

As envisioned by the Committee the procedure would be:- The owner would first create one large lot of record, which could be an entire square or larger if there are no intervening streets. Following this a site plan showing all buildings would be prepared, and by dimension would indicate the precise location of each building on a theoretical building site, probably shown by dotted or broken lines to permit computation of the open space and coverage provisions of paragraphs 7516.2 and 7516.3. This plat would be filed with the permit records together with a copy of a recorded covenant which would recite that none of the buildings so erected could be sold unless in compliance with all provisions of the Zoning Regulations.

Paragraph 7516.31 is no more than a reminder that the 1910 Height Act requires, for purposes of maximum building height, the computation of such height from the level of the curb at the street, and that the height of proposed buildings lacking street frontage might therefore be limited due to adverse topography.

Paragraph 7516.4 relates to that provision of the regulations which is signed to encourage garden type development. The provision is widely ed, including land for public housing, and since this is already an ception to general regulations, inclusion in the "Exceptions to Building ot Control", which is desirable, must be "spelled out."

While Section 7516 in an elective regulation which will be optional with the developer, advantages already foreseen are:

(a) Gerrymandering of lot lines to provide required street frontage will no longer be necessary; and,

(b) Development of some interior properties, even where clever maneuvering of lot lines will not provide required street frontage, will now be possible; and,

(c) Required off-street parking may be placed in better planned compounds without BZA approval which is now required whenever off-street spaces are not located on the lot adjoining the main structure. BZA work-load would therefore be reduced, which is desirable at both ends; and,

(d) The regulation would provide standards, applicable to most cities here modern subdivision codes have been enacted; and,

(e) Field work of the Office of the Surveyor would be reduced.

The repeal of Paragraph 8103.4 on page 2 of this agenda is necessary, since it will be redundant if these proposals are approved.

Two of the three members of the Zoning Advisory Council are also members of the Committee which the Commissioners designated to study this problem. We know that this Committee has explored and re-explored all ideal avenues through which a workable solution might be found. Regulation proposals were also drafted, checked and reworked many times prior to final

submission to the Commissioners. Other than the explanation foregoing, the Zoning Advisory Council feels it can add nothing by way of improvement.

Subject to legal review, which we believe to be essential, approval is recommended.

(S) R. O. CLOUSER

(S) WILLIAM F. McINTOSH

(S) JOHN A. ISRAELSON

MR. ASHTON: (Continuing) The Citizens' Advisory Committee did not have a quorum and took no action on the amendment.

CHAIRMAN BUKE: Do we have any people here today that would like to comment on this proposed change in the regulations as proponents of the change?

Yes, sir.

MR. HENRY F. DAVENPORT: Members of the Zoning Commission, my name is Henry F. Davenport. I am the Director of Project Development of the National Capital Housing Authority and I am appearing here on behalf of the Authority in support of the proposed amendments to the Zoning Regulations which are under consideration at this hearing.

On October 22, 1959, the Authority received a letter from Colonel Thomas B. Fullerton, the Asst. Engineer Commissioner asking for our recommendations for modifications of the Zoning Regulations and Building Code which would facilitate the development of additional low-rent public housing in the District of Columbia. In our reply to Colonel Fullerton's letter we stated in part that:

> "Perhaps the one requirement that complicates development of a project more than any other is that each of the several buildings in the project be on its own lot. This requirement not only necessitates the laborious and time-consuming job of preparing and obtaining National Capital

Planning Commission approval of a subdivision plat, but more importantly makes it obligatory to provide separate water and sewer connections for each building because such connections may not, at present, cross lot lines.

"Since public housing developments are not intended for resale, we recommend a modification of the zoning regulations eliminating the requirement that a public housing site be re-subdivided and specifying in the absence of required side yards, a minimum distance to be maintained between buildings to insure adequate light and air."

As a result of the Authority's recommendations the District Commissioners on December 3, 1959 issued Order No. 59-2252 appointing a Committee, which included members of our staff, to study the Authority's proposals. The Committee's recommendations are embodied in the Report of the Zoning Advisory Counsel dated September 3, 1963, which you have before you.

Without going into technical detail, we are satisfied that the amendments to the zoning regulations which are under consideration today, would greatly facilitate the development of low-rent public housing in the District of Columbia, and we a very strongly recommend that they be adopted.

CHAIRMAN DUKE: Thank you very much, Mr. Davenport.

Are there any other persons present who would like to speak in favor of the proposed change in the regulations?

Order Sept. 1976

MRS. HAROLD B. HINTON: Good Morning, I am Mrs Harold B Hinton, Chairman of Planning and Zoning of the Progressive Citizens Association of Georgetown. I would like to speak in favor of this provision to eliminate the metes and bounds surveys and to substitute surveys by subdivision by survey or whichever is the correct way to put it. This is something that our Association has long asked for and we suffer badly from all kinds of tricks that happen with that metes and bounds figure so I do think it should be approved, but it is put in in such a backhanded way that if it hadn't been explained to me by the Zoning Advisory Council Report I would never have know what it was talking about. And I am, of course, an amateur but I am an experienced amateur having worked in this for a number of years and if I as an amateur didn't understand it there is no other amateur in the District that would. So I would like to ask because we have to project ourselves from all these matters, the home owners that is, and this should be spelled out clearly and I think that the Zoning Advisory Council has spelled it out very clearly in their explanation so that I don't see why they don't just put that explanation somewhat cut down into the zoning regulation and accept it that way and then if they want they can fix it up with the numbers as required. But I don't understand why regulations have to be so peculiar and so backhanded and then explanations so simple.

Are you hearing both of these at this time?

CHAIRMAN DUKE: We're hearing all the comments on the changes in the regulations right now.

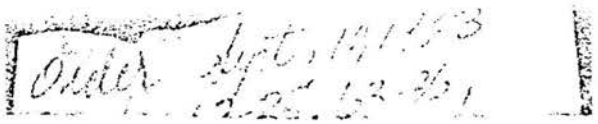
MRS. HINTON: Well, I am very much worried about that one and perhaps Mr. Clouser will explain the wording, but it seems to me this would permit a more alley dwellings and I would also like to ask if this applies only to 3307 and that would make it apply only to R-4 and R-5-A, R-5-A is garden type apartments and R-4 is the smallest type for single family residences; but if this applies to all residential zones then we would certainly oppose it because we have worked very hard to get our dwellings out of permitting new construction for alley dwellings and many government agencies have worked on it for years and if this is going to create alley dwellings then we oppose it very strongly and I think a great many other people would.

Thank you very much, Mr Chairman.

CHAIRMAN ~~MRS~~ DUKE: Thank you very much.

MRS. HINTON: Oh, also, there is one thing in here that says it would eliminate this -- would eliminate required parking which is proposed to be on a lot other than what the building is on. I oppose that because very often these lots are over in the residential zone and most of the zoning here is strip zoning and that would just permit them to go haywire putting parking lots where they wish. I oppose that.

CHAIRMAN DUKE: All right, well, thank you very much.



Is there anyone else present who would like to comment favorably on the adoption of the proposed changes in the zoning regulations?

MR. NATHAN D. GOLDEN: Would it be in order to ask what the change covers?

THE REPORTER: Name please.

MR. GOLDEN: Nathan D. Golden, President of the Westchester Apartments Corporation. Will these proposed changes in the regulations will they in any way affect the piece of ground which goes from Loston Place (?) to Tunlaw Road at the south end of the Westchester buildings? This has been up before on a change of rezoning and whether or not under these new regulations it will include that piece of ground; if so on behalf of the Westchester Corporation and the member owners of this cooperative I want to protest in any changes other than those that you, gentlemen, have heard in the past.

CHIARMAN DUKE: We'll make note of your opinion that you request, sir, and we'll consider it.

MR. GOLDEN: Yes, so far there has been no change given in the rezoning and I'm not familiar with this involved rezoning act that you have; but I do know that you people have taken into consideration any proposed changes.

CHAIRMAN DUKE: I suggest you get a copy of the regulations just given and speak to our people after the public hearing I would encourage

this and then if you would like to send a letter in giving us your views when you more familiar with the proposal then we would consider that.

MR. GOLDEN: Thank you, sir. We are on record with reference to the prpposed changes by the contemplated builders in that area.

Thank you very much.

CHAIRMAN DUKE: Thank you, sir.

Now do we have anyone that would like to speak in opposition to the proposed changes in the regulations?

NO RESPONSE.

CHAIRMAN DUKE: Apparently not. Then would you proceed with the specific cases we have before the Comm'ssion.

MAP CASES FOLLOW.

MR. ASHTON: Next case is Map Case No. One which reads as follows:

(MR. ASHTON READ INSERT # 1 WHICH APPEARS ON THE FOLLOWING PAGE OF THE TRANSCRIPT.)

EXHIBIT
BZA 16970
2a CPN

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman

DATE: April 16, 2001

SUBJECT: BZA Case # 16693 – Use Variance Request (Application of Carroll O. Little)
900 Ridge Road, S.E.
Square 5382, Lot 60

APPLICATION-IN-BRIEF

Applicant: Carroll O. Little, 900 Ridge Road, S.E
Washington, D.C. 20019.

Relief Sought: Use Variance to allow more than one principal building on a single lot of record in a R-1-B residential district

From Section: 11 DCMR §3202.3

Relief Sought Under: §3103.2

OFFICE OF PLANNING RECOMMENDATION-IN-BRIEF

The Office of Planning (OP) recommends the subject application be denied.

Applicant's Justification:

The property is currently vacant. It was constructed in the 1920's as a dwelling unit. The applicant is proposing to make repairs to the structure by building new foundation walls between the existing brick piers and building a new second floor and roof on the new structure.

BZA
Case No. 16693
Exhibit No. 29

EXHIBIT
BZA 16970
2b CPN

SITE AND AREA DESCRIPTION

The subject premise is in the Benning Heights Neighborhood of Ward Seven. 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. The Benning Heights Neighborhood predominantly consist of single family detached and semi- detached residential dwellings, with garden apartments and row dwellings concentrated in the northeastern portion of the neighborhood, beginning on the southwest side of Benning Road, southeast to H Street and east of Alabama Avenue. The subject property is at 904 Ridge Road, S.E., on Square 5382, Lot 60. The property is located on the north side of Ridge Road, one house removed from the intersection of Burns Street, to the west.

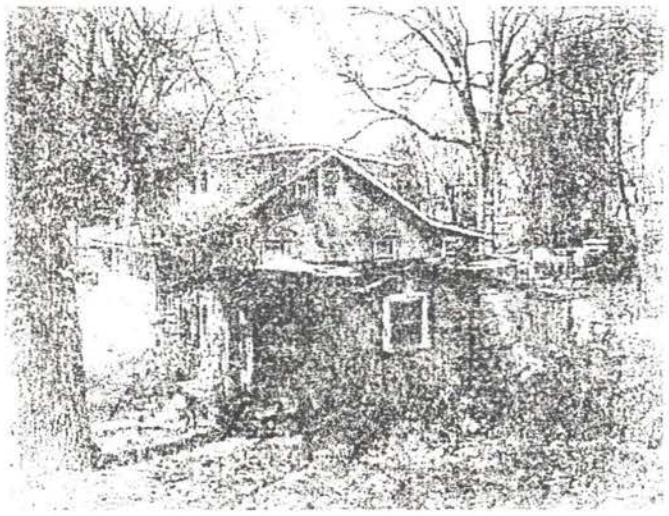


Subject Site

There is another principal residential structure on lot 60, located on the west side of the subject structure, at 900 Ridge Road. That structure is owned and occupied by the applicant.

AREA ZONING

The subject building was constructed as a residential dwelling in the 1920's, and thus predates the Zoning Act of 1958. The site is located in the R-1-B Zoned District. The R-1 district is designed to protect the quiet residential areas developed with one-family-detached dwellings and vacant areas likely to be developed for those purposes.



Existing condition of walls and roof (northwest view).

APPLICANT'S PROPOSAL

The subject property is a small residential structure located at 904 Ridge Road, S.E. It is on the same lot as another single-family dwelling, occupied by the

applicant/owner. The subject structure is in poor condition and is unsafe for human habilitation. The roof has virtually collapsed and the walls depict signs of advance deterioration. The applicant proposes to make repairs to the structure by building a new foundation between existing brick piers, replacing the floors and walls and adding a new second story and roof.

RELATIONSHIP OF THE APPLICATION TO COMPREHENSIVE PLAN

The Comprehensive Plan Generalized Land Use Map depicts the area surrounding the subject property as being in the **Low Density Residential Land Use Category.** Single family detached and semi-detached dwellings are generally the predominant use in low-density residential areas.

REQUESTED ZONING RELIEF

Pursuant to §3202.3 of the Zoning Regulations, the applicant is requesting a variance to allow more than one principal building on a single lot of record, in a R-1-B Zone District.

AUTHORITY TO GRANT VARIANCES

11 DCMR, §3103.2 cites the D.C. code provision that authorizes the BZA to grant requested variance "where, by reason of exceptional narrowness, shallowness or shape of a piece of property, or by reason of:

- **Exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property;**

The strict application of any regulation ... would result in:

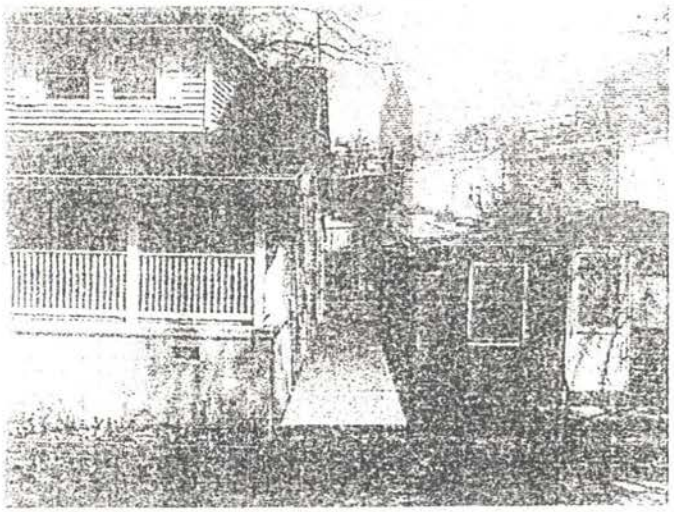
- **Peculiar and exceptional practical difficulties to or;**
- **Exceptional and undue hardship upon the owner of the property;**

Provided, that the relief can be granted:

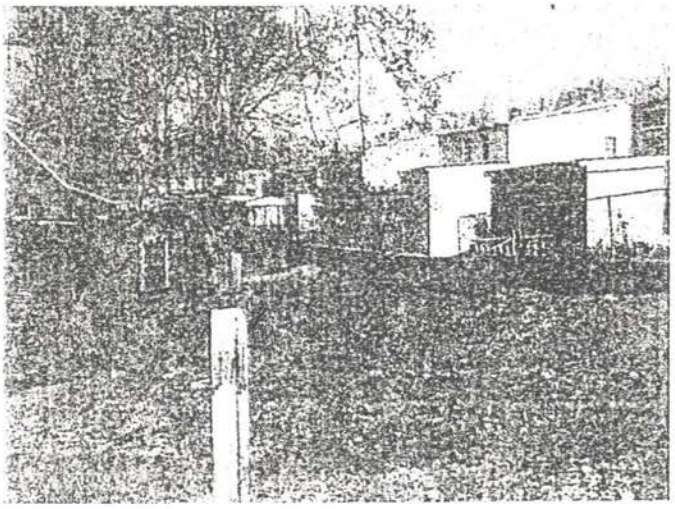
- **Without substantial detriment to the pubic good; and**
- **Without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."**

DOES THE APPLICATION MEET THE VARIANCE TESTS?

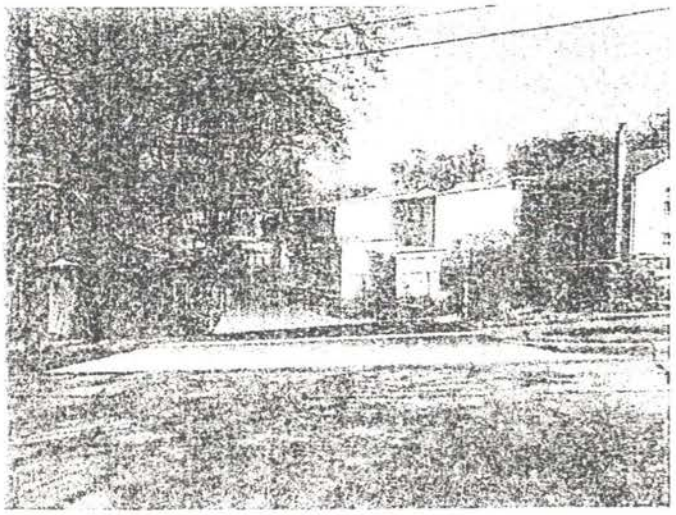
With respect to exceptional narrowness, shallowness or shape of a piece of property or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property:



Example of proposed new second story and roof (north view).



Unimproved alley "paper".



Paper alley 10 feet width imposed.

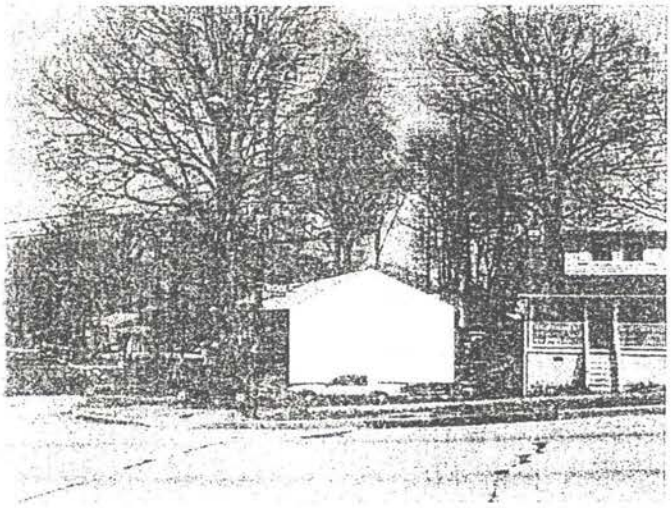
1. **The subject property does not meet the test.** The section of Lot 60, which contains the subject structure, is a triangle shaped section of the lot, at the southeast corner of the property. The entire property consists of 7,836 square feet of land, with more than the minimum amount of frontage required in the R-1-B district on a public street. There is 117.49 feet of frontage on Ridge Road to the south of the subject property. The minimum lot width in an R-1-B zoned district is 50 feet. The subject lot is 117.49 feet in width, thus not qualified as exceptionally narrow, shallow or as a uniquely shaped property.

The sides of the subject structure are within **six feet** of the other principal structure, on the west side and it is situated between **2 - 6 feet** from the eastern property line. The minimum side yard requirement in an R-1 zoned district is **eight feet.** Thus, neither the existing subject structure nor the proposed new structure (which would be on the same footprint, with the addition of a new second floor) meets the side yard requirements of the R-1-B zoned district The close proximity of the two residential structures, (less than six feet) would block light from the structure as well as restrict air circulation between the two structures. The eastern property line happens to end at an unimproved north/south (paper) public alley. The District has no immediate plans to open the alley, but this could change over time.

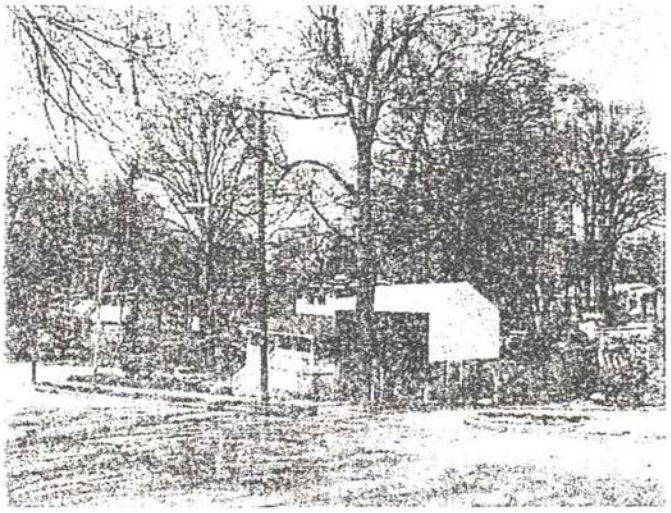
The subject property does not meet the minimum depth requirement for a rear yard in an R-1-B zoned district. The existing structure has depths to the rear of the property, ranging from **5.85 feet to 8.35 feet** of the rear property line. The proposed modifications would be constructed on the same footprint. The minimum allowable depth for rear yard, in a R-1-B zoned district is **25 feet**. Thus, the existing structure, and the proposed new structure would be extremely short of the rear yard requirements in an R-1-B zoned district.

2. **With respect to the strict application of the regulations resulting in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property:**

No. It would not cause practical difficulties to or exceptional and undue hardship upon the owner of the property if the strict application of the regulations were to be enforced.



Example of proposed new second story and roof (northwest view).



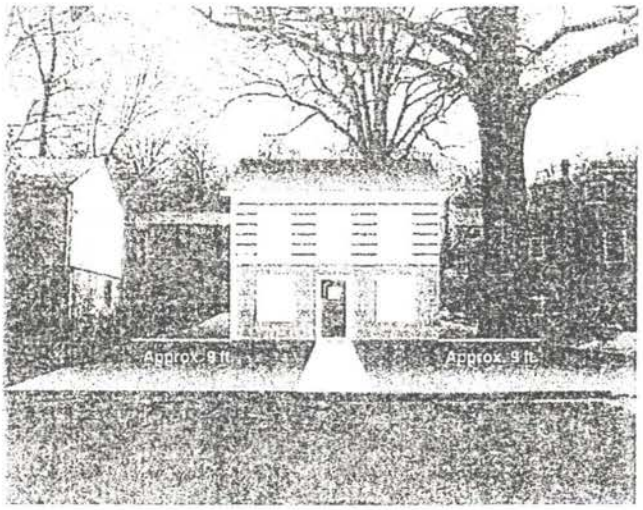
According to the applicant, the subject property was constructed as a dwelling unit in the 1920's. The age of the structure and visible lack of maintenance suggest that the structure is unsafe for human habilitation. Additionally, the structure cannot meet required rear and side yard requirements because of where the structure is location Lot 60 and its configuration on the tight southeast corner of the lot. While the applicant is requesting BZA approval to make repairs to the existing structure, as well as add a second floor and roof, it would essentially amount to new construction. Given that the structure would not meet rear or side yard requirements, it would create a substandard condition for either the new or the existing structure.

3. **Can the requested relief be granted without substantial detriment to the pubic good; and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.**

No. The structure was constructed as a residential dwelling in the 1920s,' thus, it is not consistent with current setback requirements for low-density residential districts. However, the inability of the structure to meet current regulations is not reason enough to endorse or perpetuate the continuation of non-conformance. The requested repairs and the addition of a new second floor and roof, will not correct the problem of non-conformance, but increase the size and scope of the problem.

Alternative Solution (S)

1- Since the applicant is the owner of the abutting vacant Lot 61, (a 25 x 100 foot lot, north of the property line for Lot 60) he could conceivably; 1) raze the subject structure; 2) seek a theoretical sub division of the combined Lots 60 and 61 and 3) build a new structure on the combined lots, probably as a matter-of-right, near the intersection of Ridge Road and Burns Street.



Alternative residential structure on lot 61 (east view from Burns Street).

2- The applicant is the owner of Lot 61, which fronts on Burns Street adjacent to lot 60, the subject property. There is potential for seeking BZA approval to raise the subject structure from its current location on lot 60 and build a new structure on lot 61. Because lot 61 has only 25 feet of frontage on Burns Street, the applicant could apply for a variance, citing the narrowness of the lot as an undue hardship, restricting him from developing vacant land located in a low-density zone.

COMMUNITY COMMENTS

According to Ms. Johnnie Scott Rice, Advisory Neighborhood Commissioner (ANC) for Single Member District 7E08, the subject proposal was presented to the Executive Committee of ANC 7E, on March 3, 2001 and was recommended for approval by ANC 7E. On March 13, 2001,at the regular monthly meeting. ANC7E voted unanimously to support the project. Additionally, on March 14, 2001, the Burns Street Block Club, (which include the site of the subject property) voted to approve the project.

Based on conversations with members of the community, it appears that this support was based primarily in a desire to see the existing structure, which is an eyesore, improved. There does not appear to have been consideration of the fact that the applicant could meet the goal of more intensive development of his property though a subdivision and matter-of-right construction, without further exacerbating the existing non-conformance.

OP SUMMARY RECOMMENDATION

The Office of Planning, after having reviewed the application submitted by Mr. Carroll O. Little, to allow two principal residential structures on a single lot of record, in the R-1-B zoned district, recommends that the Board of Zoning Adjustment vote to deny the application.

EXHIBIT
BZA No. 16970
2c CAN

BZA Form 2
(Revised 7/17/95)

Docket No. 16693
-02

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION

RECEIVED
D.C. OFFICE OF ZONING
2001 JAN 12 AM 11:47

NOTE: See reverse side of this application for filing instructions, filing fees and information required by the Board

DO NOT MAIL DO NOT MAIL

TO THE BOARD OF ZONING ADJUSTMENT:

Pursuant to Section(s) 3202.3 of the Zoning Regulations of the District of Columbia, an application is hereby made for the following action: TO ALLOW MORE THAN ONE PRINCIPAL BUILDING ON A SINGLE LOT OF RECORD IN A R-1-B RESIDENTIAL DISTRICT., which is provided for by Section(s) 3103.2 of the Zoning Regulations.

Premises affected are located at 904 RIDGE ROAD, S.E.
(street address)

Lot(s) 60 AND 61, Square(s) 5382,

in the District of Columbia, in Zoning District R-1-B.

Present Use of Property: SINGLE-FAMILY DWELLING.

Proposed Use of Property: SINGLE-FAMILY DWELLING.

Owner of Property: MR CARROLL O. LITTLE.

Address or Owner: 900 RIDGE RD. S.E., WASH. D.C. 20019.

State briefly the bases for action sought:
TO MAKE REPAIRS, CONSTRUCTION OF A NEW FOUNDATION WALL BETWEEN EXISTING BRICK PIERS AND CONSTRUCTION OF A NEW SECOND FLOOR AND ROOF ON THE NEW STRUCTURE.

Date: Jan. 12, 01 Signature Carroll O. Little
(Applicant)*

*The owner of the property for which application is made or his/her authorized agent may file an application. In the event an authorized agent files an application on behalf of the owner, the notice of application shall be accompanied by a letter signed by the owner authorizing the agent to act on his behalf in this application.

TO BE NOTIFIED OF HEARING AND DECISION:

Name MR CARROLL O. LITTLE

Address 900 RIDGE RD. S.E. WASH. D.C.

Zip Code 20019 Phone No. 202-583 7235

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

Jan. 12, 01

The property is currently vacant.

To make repairs, construction of a new foundation walls between existing brick piers and construction of a new second floor and roof on the new structure.

Carrole O. Robbe

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D.C. OFFICE OF ZONING
2001 JAN 12 AM 10:48

BZA
Case No. 16693
Exhibit No. 3

EXHIBIT
BZA No. 16970
tabbies 36 (CPN)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

December 31, 1986

M E M O R A N D U M

TO : Board of Zoning Adjustment

FROM : Edgar T. Nunley, Chief
: Zoning Review Branch

SUBJECT : Proposed new construction of a dwelling at 3525 ~~Williams Lane, N.W.~~ Williamsburg Lane, N.W.
Lot(s) 821 Square 2224 Zone R-1-A.

Review of plans for the proposed new construction at the above subject premises indicates that the Board of Zoning adjustment approval is required as follows:

1. Variance from the provisions of (Section 3301.6) to construct a dwelling on a lot which does not have street frontage in the R-1-A Zone (Section 8207.11).

2. Variance from the provisions of (Section 8103.3) to construct a dwelling on an assessment and taxation lot that cannot be converted to a record lot in the R-1-A Zone (Section 8207.11).

Note: This case was earlier approved by BZA under Case No. 13178 but the applicant did not start the work in the stipulated time period.

#14
14583

ZONING SECRETARIAT
DISTRICT OF COLUMBIA
1987 FEB 18 PM 3:25

EXHIBIT "D"

ZA-86-489

NOTES AND COMPUTATIONS

ADDRESS: 3525 Williamsburgh Lane, N.W. LOT(S): 821 SQUARE: 2224

ZONED: _____

	REQUIRED:	ALLOWED:	PROVIDED:	VARIANCE:
LOT AREA	7,500 sq. ft.		16,211 sq. ft.	
LOT WIDTH	75'		89.09' average	
LOT OCCUPANCY (40%)		6484.40 sq. ft.	3,291 sq. ft.	
FLOOR AREA RATIO ( )	-	-	-	
PARKING SPACES	1		1	
LOADING BERTHS	-	-	-	
FRONT YARD	25'		40.58' average	
REAR YARD	25'		90.5' average	
SIDE YARD	8'x 8'		8'x 8'	
COURT, OPEN	-	-	-	
COURT, CLOSED	-	-	-	

EXHIBIT
BZA No. 16970
3c (CPN)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

FEB 18 PM 3:25
DISTRICT OF COLUMBIA SECRETARIAT

Application No. 13178, of Michael Minkoff, Ltd., pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against allowing an addition to an existing structure which is on a lot which does not have street frontage (Sub-section 3301.6) and from the prohibition against allowing an addition to an existing structure located on an assessment and taxation lot that cannot be converted to a record lot (Sub-section 8103.3) to permit proposed one-story addition to the existing dwelling and the subdivision of the existing lot into three theoretical lots pursuant to Section 7615 in an R-1-A District at the premises 2329 Porter Street, N.W., (Square 2224, Lot 818).

HEARING DATE: February 20, March 19, May 14, May 21 and June 4, 1980
DECISION DATE: June 4, 1980 (Bench Decision)

FINDINGS OF FACT:

1. The subject application was scheduled originally for public hearing on February 20, 1980. At the public hearing the applicant requested a continuance which was granted by the Board to March 19, 1980. At the March 19, 1980 public hearing, the applicant requested a further continuance and that the application be amended and readvertised. The Chair directed that the application be set for the public hearing of May 14, 1980 as amended. At the public hearing of May 14, counsel for the opposition requested a continuance since he had just been retained and was not prepared to go forward. The application was continued to May 21, 1980.

2. At the public hearing of May 21, 1980, the Board granted permission to the applicant to further amend the application to allow for no more than two dwelling units to be located on the site, and to create no more than two theoretical building sites pursuant to a "Declaration of Covenant" marked as Exhibit 25(A) of the record and for a variance from the side yard requirements to preserve an existing stone garage on the site.

#8
1983

3. The applicant submitted a revised set of plans for the proposed building addition which relocated the addition to the northeast side of the existing house. The plans submitted to the Zoning Administrator's office showed such addition located on the west side of the existing structure. These plans were accepted by the Board and marked as Exhibit 29 of the record.

4. The subject site is located to the east of Williamsburg Lane and to the north of Porter Street. It is bounded by R-1-A zoned lots, and has no street frontage. The property is known as 2329 Porter Street, N.W. It is in an R-1-A District.

5. The subject site is approximately 38,700 square feet in area. It is irregularly shaped and is improved with a two-story single family dwelling.

6. The applicant is requesting to build a 22.6 foot by 15.9 foot one story addition for use as a family room. The addition will be constructed of stone to match the existing dwelling and will have a tile roof.

7. The Zoning Regulations require that each lot to be used and occupied by a one family detached dwelling shall have street frontage measured along the street a distance equal to at least forty percent of the required minimum width of lot and in no case less than fourteen feet.

8. The existing structure located on the site was erected in 1907. This structure was located on old Lot 13. The present subject site was originally laid out as old Lots 12, 13 and 54 in Square 2224.

9. The streets and roadways leading to the subject site created as right-of-ways were Roosevelt Drive and Clifton Avenue. These rights-of-way have only been partially improved at this time with macadam and gravel.

10. In 1930 a plat was recorded with the Office of the Surveyor as part of the District of Columbia highway plan which envisioned a Quebec Street linkage with Porter Street, which would have provoded direct access to the subject site via the public roadway system.

11. The Quebec Street linkage proposal was abandoned in 1953 when 24th Street, now Williamsburg Lane, was cut through. The present sites of street access to Porter Street and Williamsburg Lane has remained the same since that time.

12. As a result of the construction of Williamsburg Lane instead of the Quebec Street connector, the subject site is now "landlocked" for zoning purposes even though it contains a right-of-way for highway purposes which connects directly to Williamsburg Lane.

13. Without the granting of variance relief no building permits may be issued for the proposed building addition or for the additional dwelling unit proposed to be erected on the site.

14. A side yard variance was requested to permit an existing stone garage to be retained on the site. By consolidating the site into a single assessment and taxation lot, the historical lot division line in the site was removed. The applicant's request would permit the reinstatement of the historical boundary.

15. The applicant conducted negotiations with neighboring and abutting property owners for the development of the site. These negotiations resulted in the execution by the applicant of a "Declaration of Covenants" dated May 13, 1980 and an agreement by abutting property owners to support the application.

16. The proposed use of the site for a total of two dwelling units is far less dense than that permitted by the Zoning Regulations for an R-1-A parcel of this size.

17. The applicant submitted no architectural drawings for the proposed additional structure to be located on the site and requested the Board to approve the construction of the additional structure consistent only with the building parameters outlined contained in the Covenant and with no further restrictions on its design.

18. Several letters in support of the application were submitted to the Board from abutting and neighboring property owners.

19. Advisory Neighborhood Commission - 3F submitted no recommendation on the application. The single member district 3F01 recommended that the application be approved. The Board is required by statute to give "great weight" to the issues and concerns expressed only by the ANC as a body, not to a single member district.

20. There was opposition to the application by a property owner whose site is within the right-of-way leading from the subject site to Porter Street, said right-of-way being known as Clifton Avenue. The opposition argued that Clifton Avenue is a private road that belongs to the opposition and that any use of the road was done through the permission of the opposition. Approximately three neighboring property owners were granted permission to use Clifton Avenue. The opposition does not wish to extend this courtesy to the applicant. An action to quiet title to Clifton Avenue has been filed in the D.C. Superior Court by the opposition. The opposition was concerned about the potential of future development of larger tracts of undeveloped land within the vicinity of the subject site and the ability to use the subject contested private road for the access to such undeveloped tracts. There was no dispute as to the applicant's ability to utilize the Williamsburg Lane right-of-way, known as Roosevelt Drive.

21. The Board finds that the applicant has direct access to Roosevelt Drive from Williamsburg Lane, a public street. The Board ruled that it would only consider the impact of the applicant's proposal on neighboring properties in the subject application and that the question of the legality of the Clifton Avenue right-of-way from Porter Street, a public street, was more properly addressed in another forum.

CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the applicant is seeking area variances, the granting of which requires a showing of a practical difficulty upon the owner of property which is inherent in the property itself.

The Board notes that the subject site is unique and affected by several extraordinary or exceptional conditions. The size of the lot is approximately 38,700 square feet which is far in excess of the minimum required for a detached dwelling in an R-1-A District. The subject site is landlocked under the Zoning Regulations in that it has no direct street access to public roadways. Although the site is landlocked it is serviced by private rights-of-way which give direct access to public streets. The site has had a unique development history and without the granting of variance relief no building permits may be issued for the proposed building addition or any other structure to be erected on the site. The Board concludes that the inability to use property in a manner otherwise permitted by the Zoning Regulations by the mere fact that there is no street frontage under the Regulations when, in fact, access to the public street system is provided constitutes a most compelling type of practical difficulty.

The side yard variance requested is necessary to permit the preservation of an existing stone garage on the site which would otherwise need to be demolished in order to have compliance with the Zoning Regulations.

The subject site is completely surrounded by R-1-A zoned and developed single family residential uses. The applicant's proposed building addition and proposal to construct an additional dwelling unit on the site would cause no substantial detriment to the public good nor substantially impair the intent, purpose and integrity of the Zone Plan.

In granting the application, the Board concludes that the applicant may construct on the subject site an additional structure anywhere within the building parameters set forth in the Covenant dated May 13, 1980 and that the Board retains no design control over such building since no architectural plans were submitted to the Board for said structure. Accordingly, it is ORDERED that the application, as amended, is GRANTED SUBJECT to the CONDITION that no exit or entrance of construction vehicles be made through the right-of-way described in the record as Clifton Avenue.

VOTE: 5-0 (Charles R. Norris, John G. Parsons, Connie Fortune, William F. McIntosh and Leonard L. McCants to GRANT).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 28 JUL 1980

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."