GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17026 of William Shortinghouse, pursuant to11 DCMR § 3103.2, for a variance from the rear yard setback requirements under § 404.1 for construction of a rear deck and carport to an existing apartment house in the R-4 District at premises 1326 Girard Street, N.W. (Square 2860, Lot 821).

HEARING DATE: June 24, 2003
DECISION DATES: July 8, 2003, August 5, 2003

Preliminary Matters

William Shortinghouse, the owner of the subject premises (the owner or the applicant), filed an application with the Board of Zoning Adjustment (the Board) on April 25, 2003 for variance relief under 11 DCMR § 3103.2 from the requirement of § 404.1 of the Zoning Regulations relating to the 20 feet minimum rear yard setback in the R-4 zone. For the reasons stated below, the Board finds that the applicant failed to meet all the elements for an area variance. The application is therefore denied.

Notice of Public Hearing The Board scheduled a public hearing for June 24, 2003. Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, owners of all property within 200 feet of the subject premises, the Advisory Neighborhood Commission (ANC) 1B, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect. (Exhibit 32).

OP Report OP reviewed the variance application and prepared a written report recommending that the Board deny the variance relief (Exhibit 31). OP found that there was no unique condition of the property, which necessitated the variance. It also found that denial of the variance would not result in any practical difficulty that would prevent the owner from using the property. Although OP initially found that granting the variance would adversely impact on the zone plan, OP later indicated that such impact would be minimal.

ANC Report In its report dated June 7, 2003, ANC 1B indicated that at a regularly scheduled monthly meeting with a quorum present, it voted to support the variance (Exhibit 28). Citing its support for the proposed rear deck and carport, the ANC asserted that granting the variance would not adversely affect the neighborhood with respect to light, air, parking or transportation.

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Persons in Support of the Application Gladys Hicks, zoning consultant for the applicant, testified in support of the application, as did Phillip Spalding from the ANC and Robert Myers, owner of 1323 Girard St, located diagonally across the street from the property. The Board also received letters in support from other nearby property owners (see Exhibits 29 and 30), and a letter in support from Councilman Jim Graham (Exhibit 34).

Closing of the Record At the conclusion of the public hearing, the Board requested supplemental statements from the applicant, asking him to restate how the application met the applicable legal test for variance relief.

Decision Meetings At the July 8, 2003 meeting, Board Member Etherly moved for approval of the variance, but the motion failed for lack of a majority vote. The case was continued to August 5, 2003, when the Board voted to deny the variance application.

FINDINGS OF FACT

1. The subject property was built in the early 1900s as a single family dwelling with a detached two-story carriage house in the rear. The dwelling was one of the original buildings on the block. Although the dwelling was converted to a four-unit apartment house some time ago, it is still the only detached building in a square and block of attached row dwellings. The accessory carriage house is non-conforming in terms of its second level story and height, and by virtue of its encroachment into the rear yard setback

2. The applicant proposes to convert the existing four-unit apartment dwelling to a seven-unit
apartment dwelling by connecting the accessory carriage house to the principal structure by a deck. Specifically, the applicant proposes to construct a two-story rear deck addition and one-story carport at the rear of the apartment dwelling. The proposed deck would provide a recreational amenity to the apartment dwelling, and the carport (under the deck) would establish 2 more parking spaces.[1] The proposed rear deck addition and carport would completely extinguish the existing rear yard, thereby requiring the area variance requested.

3. The rear yard of the subject property was reduced in size when the District of Columbia, using its eminent domain power, took a portion of the yard to create an alley. However, the Board finds that all of the dwellings along Girard Street are similarly setback and all of the dwellings along the alley are encumbered by it to some degree. Due to the alley widening, adjoining lots are actually shallower than the subject lot, which maintained its depth around the existing carriage house (See,

[1] Although the Zoning Regulation require only 2 parking spaces (and the property already has 3), the applicant asserts that 5 spaces would be desirable at the proposed project.

Exhibit 31, p.6). In fact, compared to other nearby properties, this property benefits from a larger lot, larger structure and the added amenity of having an accessory two-story carriage house.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code § 6-641.07(g)(3) (2001), to grant variances from the strict application of the Zoning Regulations. The applicant here seeks complete relief from the requirement under § 404.1 of the Regulations that it maintain a 20 feet rear yard setback, so as to permit it to have no rear yard at all.

In reviewing a variance application, the Board is required under D.C. Official Code § 6-623.04 (2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board agrees with OP's recommendation that the variance request be denied.

The Board is also required under D.C. Official Code § 1-309(d) (2001) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. The Board has carefully considered the issues and concerns raised in the ANC's report and testimony, which mirror those of the applicant and which address the benefits of the proposed project. With respect to those issues and concerns, the Board did find their arguments to be persuasive.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove "practical difficulties," an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* At 1170.

The applicant has failed to establish that it has met the three-prong test for a variance

First prong The applicant has not demonstrated that there are any conditions that are unique to the property that necessitate the variance. The applicant alleges that the property is unique because: (1) there is a carriage house on the property, (2) the rear yard depth was reduced by an alley after the carriage house was built, and (3) the subject property is the only property on the square that can lawfully accommodate seven units. However, none of these characteristics necessitate the variance. The applicant is not

compelled to construct a deck and carport and completely eliminate the rear yard setback because of the existence of the carriage house, the change of the rear yard boundary, or the comparatively large size of the lot. While the carriage house itself may be unique to the block, it does not require a variance to lawfully remain at the property. With respect to the second claim, the alley is not a characteristic that is unique to this property. As stated in the Findings of Fact (paragraph 3), all of the dwellings along the alley are burdened by the alley to some degree. With respect to the third type of alleged uniqueness -- the comparatively large size of the lot-- this factor can only be characterized as a benefit of the property, not a unique feature that necessitates a variance. While the applicant's desire to fully use the parcel and avoid "waste" is understandable, it is not a legal basis for granting a variance.

Second prong The applicant has not demonstrated any practical difficulty caused by the Zoning Regulations. Denial of the variance will not result in any practical difficulty which will prevent the applicant from using his property. The main structure is a four unit apartment house, a use that is allowed in the zone and can be reasonably continued. Likewise, use of the carriage house as an accessory structure may also lawfully continue without variance relief. There is more than one reasonable alternative use for the carriage house. For example, the carriage house may be used incidentally for storage, as a leasing office, or as common recreation space. The Board finds, further, that the applicant's desire to provide more parking than is required under the Zoning Regulations, though laudable, is a voluntary choice and therefore does not constitute a practicable difficulty.

Third prong The applicant has met this part of the variance test. Based upon the record, including the reports of the ANC and OP, the Board is persuaded that the requested variance would have minimal impact in the zone and would therefore not result in substantial detriment to the public good or the zone plan.

While the applicant has satisfied the third prong of the variance test, he has not satisfied either of the first two prongs of the test. As stated at the outset, the applicant must satisfy all three prongs test for area variances in order for relief to be granted.

The ANC's issues and concerns

The ANC asserted that it supported the variance application because of the perceived benefits of the project and the fact that it would result in no adverse impacts on light, air, or traffic. In other words, the ANC focused on the third prong of the variance test (that the variance will not result in substantial detriment to the public good or the zone plan). The Board did give great weight to the issues and concerns they addressed – which related only to the third prong of the variance test – and did find their reasoning persuasive. However, the ANC did not address the other two prongs of the variance test;

and, as explained above, the variance is denied due to the applicant's failure to satisfy those prongs of the test.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the motion to **DENY** the variance is granted.

VOTE taken on August 5, 2003: 3-0-2 (Ruthanne G. Miller and David A. Zaidain to deny, Peter G. May to deny by absentee vote, Geoffrey H. Griffis and Curtis L. Etherly, Jr. opposed to the motion).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

DATE OF FINAL ORDER: JAN 27 2004

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DEMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL. SG/rsn

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BZA APPLICATION NO. 17026

As Director of the Office of Zoning, I hereby certify and attest that on JAN 2 7 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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rsn

ATTESTED BY:

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Director, Office of Zoning