GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17045 of Neavelle A. Coles, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, a variance from the open court requirements under section 406, and a variance from the nonconforming structure requirements under subsection 2001.3, to construct a two-story addition to an existing single-family dwelling in the R-4 District at premises 1215 E Street, N.E. (Square 1008, Lot 188).

HEARING DATE: July 29, 2003
DECISION DATE: September 9, 2003

DECISION AND ORDER

This application was submitted June 2, 2003 by the owner of the property that is the subject of the application, Neavelle Coles ("Applicant"). The self-certified application requested several variances needed to allow the rehabilitation of a garage and carriage house and construction of a two-story addition to the rear of the Applicant's row house at 1215 E Street, N.E.

Following a hearing on July 29, 2003 and a public meeting on September 9, 2003, the Board voted to approve the application with respect to the open court and to deny it with respect to lot occupancy.

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. By memorandum dated June 2, 2003, the Office of Zoning gave notice of the application to the Office of Planning, the Department of Transportation, the Councilmember for Ward 6, Advisory Neighborhood Commission ("ANC") 6A, and Single Member District/ANC 6A06. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters or memoranda dated June 6, 2003, to the Applicant, ANC 6A, and all owners of property within 200 feet of the subject property providing notice of the hearing. Notice of the hearing was published in the *D.C. Register* on June 13, 2003 (50 DCR 4728).

Requests for Party Status. ANC 6A was automatically a party in this proceeding. George Olson, a resident of a row house across the street from the subject property who did not attend the public hearing, made an untimely request for party status as a proponent; his letter was received into the record as a letter in support of the application. The Board

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received letters in support of the application from the residents of both row houses immediately adjoining the subject property.

Applicant's Case. The Applicant's architect, Charles Bryant, presented testimony and evidence at the public hearing, stating that the variances were needed to allow construction of a two-story addition to the rear of a single-family row house dwelling to expand the kitchen and breakfast area on the first floor and to create a new master bedroom on the second floor, thereby creating a third bedroom in the house.

Government Reports. By memorandum dated July 17, 2003, the Office of Planning ("OP") recommended (a) approval of a special exception under section 223 to grant relief needed from the open court requirements under section 406 and nonconforming structure provision under subsection 2001.3, and (b) denial of the requested variance from the lot occupancy requirements of section 403.

ANC Report. By letter dated July 14, 2003, the chairman of ANC 6A indicated that at a regularly scheduled and properly noticed meeting on July 10, 2003, ANC 6A voted unanimously (6-0, with five commissioners comprising a quorum) to support the application.

FINDINGS OF FACT

1. The subject property is located at 1215 E Street, N.E. (Square 1008, Lot 188) in the Capitol Hill neighborhood of Ward 6. The site is improved with a two-story row house dwelling, built around 1908 and facing E Street, and a two-story accessory building abutting a public alley at the rear of the lot.

2. The subject property is a rectangular interior lot on the south side of E Street. Chain link or wooden fences, between four and seven feet tall, extend along both side property lines behind the row house. Development in the vicinity of the subject property consists primarily of similar two- or three-story row houses.

3. The accessory building, which formerly served as a carriage house, is in poor condition. According to OP, the subject property is the only lot in the square that retains a rear garage/carriage house.

4. On July 17, 2002, the Applicant was issued Building Permit No. B451210, which approved modification of plans for a prior permit, No. B447208. The building permit authorized interior renovation of the residence, demolition of a one-story porch at the rear of the dwelling, construction of a new two-story rear addition in substantially the same location as the porch, and demolition of the garage/carriage house. The Applicant indicated that issuance of the building permit was

conditioned on removal of the accessory building because otherwise the planned rear addition would increase total lot occupancy beyond the matter-of-right maximum. However, after receiving the building permit, the Applicant decided to retain and renovate the accessory building for use as a garage with second-floor storage space. The rear addition is now substantially completed.

5. The subject property has dimensions of 16 feet by 95 feet, and a lot area of approximately 1,520 square feet. The new rear addition, which replaced a porch, increased lot occupancy only slightly, from 79 percent (1,128 square feet) to 80 percent (1,368 square feet). A court, four feet wide and 14 feet long, is located at the rear of the row house on the west side of the lot. The rear yard, after construction of the new addition, is 36 feet.

6. The subject property and surrounding properties are zoned R-4. The R-4 district requires a minimum lot area of 1,800 square feet, with a minimum lot width of 18 feet; maximum lot occupancy of 60 percent; a rear yard with a depth of at least 20 feet; and six feet as the minimum width of an open court. 11 DCMR §§ 401.3, 403.2, 404.1, 406.1.

7. The subject property is nonconforming with respect to lot area, lot width, lot occupancy, and width of open court.

8. The subject property is not located within a historic district.

9. The Applicant noted the nonconforming aspects of the subject property with respect to size and area, and testified that failure to obtain variance relief would result in an inability to rehabilitate the property consistent with current market expectations for residential properties in the neighborhood and would cause financial hardship.

10. The Applicant also testified that the subject property was unique in that it retained the historic carriage house, and that approval of the requested variances would not create serious impacts with respect to traffic or noise.

11. The Office of Planning noted that the rear addition appears inconsistent with open court and nonconforming structure provisions of the Zoning Regulations, and testified that special exception approval under section 223 "would address expanding the nonconforming aspects of the existing building onto the new addition." However, OP also noted that the Applicant's proposed 80 percent lot occupancy requires variance relief because section 223 limits increases in allowable lot occupancy to 70 percent.

12. OP testified that the rear addition did not have an adverse effect on the use or enjoyment of any abutting or adjacent dwelling. OP noted that the rear addition has a footprint similar to the previous porch in the same location, has no windows along the common eastern wall, and continues the four-foot court setback along the west side. OP also concluded that the rear addition is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and would not tend to affect adversely the use of the neighboring properties.

13. OP testified that the size and shape of the subject property were not exceptional conditions relative to other properties in the same square, where lot areas range from 1,108 to 1,710 square feet, and only one lot (Lot 204) is as wide as 18 feet.

14. OP also concluded that the zoning regulations did not present a practical difficulty for the Applicant. OP noted that the Applicant secured a building permit to construct the rear addition premised on the removal of the garage/carriage house, and that the Applicant's ability to use the subject property after demolition of the carriage house was apparently similar to that of neighboring property owners.

15. Noting that the Applicant proposed 80 percent lot occupancy where a maximum of 60 percent is permitted as a matter of right, OP concluded that the requested variance relief for lot occupancy could not be granted without impairing the intent, purpose, and integrity of the Zoning Regulations and Map.

16. ANC 6A voted unanimously to support the Applicant's request for variances from lot occupancy, open court, and nonconforming structure requirements needed to construct a rear addition. The ANC concluded that granting the requested variances would not create substantial detriment to the public good, and the rowhouse "would continue to be used as a single-family dwelling as specified in the zoning regulations."

17. The ANC noted that the garage/carriage house is not located in a historic district and thus "has no special protections despite its age and possible historic significance," but asked the Board to "give consideration to the neighborhood's desire to retain the carriage house/garage in considering the application." The ANC stated that retention of the garage/carriage house "would result in a lot occupancy of 73.7%, ... only 1.7% higher than the lot occupancy prior to construction of the addition, and 3/7% higher than the lot occupancy that could be allowed through special exception." ANC 6A recommended consideration of the garage/carriage house has an "extraordinary or exceptional situation or condition" in that there are few other structures of similar construction and age on similar nearby lots. According to the ANC, "[d]emolishing this valued structure would be

a detriment to the public good by removing an historic building element" and "would result in lot occupancy of only 53.7% for the owner."

18. The Board received a letter from Teresia Bush, resident of 1213 E Street, N.E. (the row house abutting the subject property on the west), expressing her support for preservation of the carriage house, which was "threatened with extinction" because the Applicant chose "to add space to the main house, thereby reducing the area of the backyard to slightly smaller than the size required." Teresia Bush indicated no objection to the rear addition, although it caused a small loss of light and privacy at the rear of her residence.

19. The Board received a letter from Bruce Grefrath and Susan Parker, residents of 1217 E Street, S.E. (the row house abutting the subject property on the east), supporting the retention of the carriage house and indicating that the new rear addition to the subject property was "a vast improvement over the rat infested old structure."

CONCLUSIONS OF LAW

The Applicant requests a variance from the lot occupancy requirements under section 403, a variance from the open court requirements under section 406, and a variance from the nonconforming structure requirements under subsection 2001.3 to construct a two-story addition to an existing single-family row dwelling. The Applicant has already constructed the rear addition pursuant to a permit issued on condition of demolition of the carriage house at the rear of the property; the Applicant now seeks the requested variances in order to retain the carriage house for use as a garage. The Board is authorized to grant a variance from the strict application of the zoning regulations where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of the property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map. D.C. Official Code § 6-641.07(g)(3) (2001); 11 DCMR § 3103.2.

The Board notes OP's testimony that the size and shape of the subject property are not exceptional conditions relative to other properties in the same square. However, with respect to the open court, the Board finds that existing nonconforming conditions – the narrowness of the lot and the four-foot width of the open court created by the original rowhouse – create an exceptional condition and that practical difficulties would result from the strict application of the Zoning Regulations. The existing court is four feet

wide, where a minimum of six feet is required, and the lot width is 16 feet, where an 18-foot lot width is required. Strict application of the Zoning Regulations with respect to open courts would allow a rear addition only 10 feet wide on the subject property. Instead, the Applicant's rear addition continues the existing four-foot open court, thereby allowing an addition of the same width as the rear portion of the existing row house. The Board credits the testimony of OP and the neighboring property owners that the rear addition is in harmony with the general purpose and intent of the zone plan with respect to the open court and does not adversely affect the use of neighboring property.

Accordingly, the Board grants the Applicant's request for a variance from the open court requirements under section 406 to construct a two-story addition to the existing single-family dwelling. The Board also grants the Applicant's request for a variance from the nonconforming structure requirements under subsection 2001.3 to the extent that the addition does not conform to the open court requirements.

With respect to the Applicant's request for a variance from lot occupancy requirements, the Board credits the testimony of the Applicant and OP that the subject property is unique in that it contains the only carriage house remaining in the square. However, the Board is not persuaded by the Applicant's assertions of practical difficulty arising from the strict application of the zoning requirements with respect to lot occupancy. The rowhouse dwelling is typical for its location and was purchased by the Applicant despite perceived shortcomings with respect to number of bedrooms and the size of the kitchen. The Applicant has completed construction of a rear addition built pursuant to a permit issued on the basis of the Applicant's intention to demolish the carriage house, so that the new addition would conform to the requirements of the Zoning Regulations. The need for variance relief arises from the Applicant's current desire to retain the carriage house for use as a garage. In light of the subject property's nonconforming aspects, the Applicant's assertions that the carriage house should be retained as a unique or historic structure should have been addressed before the rear addition was built.

Nor did the Applicant demonstrate that the requested variance from the lot occupancy requirement would be consistent with the general intent and purpose of the zone plan and map. The rear addition did not significantly increase lot occupancy relative to the porch it replaced, but the construction of a new rear addition along with retention of the existing garage/carriage house would result in lot occupancy (80 percent) that is substantially greater than that permitted in the R-4 zone as a matter of right (60 percent) or by special exception (70 percent). The Board concurs with OP that the requested variance relief for lot occupancy cannot be granted without impairing the intent, purpose, and integrity of the Zoning Regulations and Map.

The Board is sympathetic to the interest expressed by the ANC and neighboring property owners in seeing the carriage house preserved and renovated for use as a garage.

However, as the ANC notes, the subject property is not located in a historic district and thus the carriage house is not subject to historic preservation protections. The Board also notes that the ANC's recommendation was based in part on an inaccurate calculation of lot occupancy; retention of the carriage house, after construction of the new rear addition, would result in a lot occupancy of 80 percent, rather than the 73.7 percent stated by the ANC, in a zone district where 60 percent is permitted as a matter of right.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a variance from the open court requirements under section 406 but not with respect to variances from lot occupancy requirements under section 403 or from the nonconforming structure requirements under subsection 2001.3. Accordingly, it is therefore **ORDERED** that the application is **GRANTED** in part and **DENIED** in part.

VOTE: **4-0-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, and Peter G.cMay to approve a variance from the open court requirements of section 406; David Zaidain not voting, not having heard the case).

VOTE: **1-3-1** (Ruthanne G. Miller in favor of a motion to grant a variance from lot occupancy requirements of section 403; Geoffrey H. Griffis, Curtis L. Etherly, Jr., and Peter G. May opposed; David A. Zaidain not voting, not having heard the case).

VOTE: **3-1-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., and Peter G. May to deny variances from lot occupancy requirements of section 403 and from the nonconforming structure requirements under subsection 2001.3; Ruthanne G. Miller opposed; David Zaidain not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member approved the issuance of this order.

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

FINAL DATE OF ORDER: JAN 2 1 2004

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. MN/RSN

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As Director of the Office of Zoning, I hereby certify and attest that on JAN 2 1 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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