GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17090 of Lee C. Bauer, pursuant to 11 DCMR § 3103.2, for variances from the following provisions of the Zoning Regulations: the nonconforming structure provisions of § 2001.3, the floor area ratio requirement of § 402.4, the lot occupancy requirement of § 403.2, the rear yard coverage maximum of § 2500.3, and the accessory garage alley set-back requirement of subsection 2300.2(b), to allow construction of a free-standing accessory garage with a roof deck in the DCOD/R-5-B District at premises 2116 O Street, N.W. (Square 69, Lot 146).

HEARING DATE: July 27, 2004, October 19, 2004
DECISION DATE: November 2, 2004

DECISION AND ORDER

This application was filed by Lee Bauer ("Applicant"), the owner of the property that is the subject of the application, ("subject property") on September 17, 2003. The application requested two variances[1] in order to construct a rear garage with a rooftop deck, but action on the application was deferred at the Applicant's request due to his travel schedule.

The Board scheduled a public hearing on the application for July 27, 2004, which was continued to, and completed on, October 19, 2004.

At its public meeting on November 2, 2004, the Board voted 2-3-0 to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memorandum dated September 23, 2003, the Office of Zoning ("OZ") gave notice of the filing of the application to the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), Advisory Neighborhood Commission 2B ("ANC"), the ANC within which the subject property is located, Single Member District /ANC 2B06, and the Councilmember for Ward 2. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *District of Columbia Register* and on May 25, 2004, mailed notices to the ANC, the Applicant, and to all owners of property within 200 feet of the subject property, advising them of the hearing date.

Requests for Party Status. ANC 2B was automatically a party to this case. There were no other requests for party status, although the Board received two written submissions from neighbors opposed to the project.

[1]The application originally requested only two variances, from §§ 2001.3 and 2300.2, but during the hearing, the Board amended the application to add variance relief from §§ 402.2, 403.2, and 2500.3.

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Applicant's Case. The Applicant's architect, David Akopian, presented testimony and evidence at the public hearing. The Passoneaus, immediate neighbors of the Applicant, and another nearby neighbor testified in favor of the Applicant's project.

Government Reports. The Office of Planning filed a report dated July 20, 2004 with the Board. OP listed the two regulations from which the Applicant requested variances, but listed three more variances which OP determined that the Applicant also needed, as well as a possible sixth. After analyzing in its report all the possibly necessary variances, OP opined that the Applicant had not met his burden of proof and recommended denial of all the variances.

There were no other government reports filed in this case.

ANC Report. There was no written ANC Report filed nor did a representative of the ANC testify at the hearing.

FINDINGS OF FACT

1. The subject property is located at 2116 O Street, N.W., in Square 69, Lot 146. It is located in a DC/R-5-B zone district.

2. The property is a regular rectangular lot 22 feet wide and 95 feet deep, giving it a lot area of 2,090 square feet. It is improved with a three-story row house with a basement used as a 4-unit multi-family dwelling and occupying approximately 61% of the lot.

3. The property is nonconforming as to lot occupancy as the R-5-B District allows only a 60% lot occupancy. *See,* 11 DCMR § 403.

4. The rear yard of the dwelling is approximately 33 feet long and abuts a narrow, 10-foot wide alley. The rear yard has a fence running through it parallel to the alley, and between the fence and the alley are two parking spaces.

5. The property is a contributing structure to the Dupont Circle Historic District.

6. The Applicant proposes to construct a 384-square-foot detached garage with a rooftop deck at the rear of the lot. The proposed garage would accommodate two vehicles and would open directly onto the alley.

7. For zoning purposes, the construction of the proposed garage would eliminate the Applicant's rear yard. *See,* 11 DCMR § 199.1 (definition of "Yard, rear" and "Yard, rear, depth of").

8. The construction of the garage would increase the nonconformity of the property by increasing the lot occupancy to 83.5%.

9. The proposed garage would increase the floor area ratio (FAR) of the property to 2.1, where a FAR of only 1.8 is permitted by the Zoning Regulations. *See,* 11 DCMR § 402.

10. The garage is proposed to be constructed flush with the alley, leaving only a 5-foot setback from the center of the alley, 7 feet less than the required 12 feet. *See,* 11 DCMR § 2300.2. This would create a new nonconformity with respect to the setback from the centerline of the alley.

11. The lack of any setback of the garage from the alley puts the garage-top roof deck only 10 feet away from the rear yards of the properties across the alley. This increase of occupancy and activity to within 10 feet of these properties will negatively affect their privacy.

12. The construction of the proposed garage will decrease the access width to the two parking spaces from 22 feet to 19 feet, making it more difficult to turn from the alley into the proposed garage than it is to turn from the alley into the open parking spaces existing now.

13. The property is densely used as it accommodates four housing units and exceeds the maximum lot occupancy.

14. Drainage in the alley is poor and at least parts of the alley ice over in the winter. These problems may be exacerbated if the proposed garage is constructed.

CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning Regulations in order to relieve difficulties or hardship 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, strict application of any Zoning Regulation "would result in particular and exceptional practical difficulties to or exceptional undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3), 11DCMR § 3103.2. Relief can be granted only "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." *Id.* An applicant for an area variance must make the lesser showing of "practical difficulties," as opposed to the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment,* 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case, therefore, had to make three showings: uniqueness of the property, that such uniqueness results in "practical difficulties" to the Applicant, and that the granting of the variance will not impair the public good or the intent and integrity of the zone plan and regulations.

The Applicant herein has failed to meet any of the three prongs of the variance test. There was no evidence of any uniqueness of this property. The lot is not particularly small, with a lot area of 2,090 feet. Nor is it oddly-shaped or narrow, but is a regular rectangle with dimensions of 22

feet for width and 95 feet for depth. There is no significant grade change within the lot. Although the structure on the lot is above maximum lot occupancy, there is still a sizeable rear yard, providing open space, light, and air to the subject property and the surrounding properties. During the hearing on July 27, 2004, the Applicant's architect stated, with regard to the subject property, that "[i]t's not a unique property. You cannot say that it's a unique property." *See,* July 27, 2004 transcript at 107, lines 22-23.

Even after being permitted a continuance to better prepare his case, the Applicant still failed to meet the variance test. When discussing the variance from the 12-foot setback requirement, the Applicant's architect set forth three reasons why such a variance should be granted: the structure was built over 100 years ago and cannot necessarily conform to the Zoning Regulations, a small brick patio between the rear of the dwelling and the proposed garage will be retained, and the proposed garage footprint will be aligned with that of the neighbor's. These were essentially the only reasons put forth by the Applicant in arguing for all of his multiple variances. None of these reasons, however, support, or indeed are particularly relevant to, the granting of a variance, let alone several variances.

Although the Board is aware that many neighbors of the Applicant have already done what he is proposing, the Board concludes that it must deny his requested variance relief. If that were the test, this Board would be compelled to grant a slew of variances throughout the residential areas of the District.

In this conclusion, the Board, pursuant to D.C. Official Code § 6-623.04 (2001), gives great weight to, and agrees with, OP's recommendation of denial. The Applicant did not make any showing of an extraordinary or exceptional situation or condition of the property so that the first prong of the variance test has not been met. The Board need not address in any detail the second and third prongs of the test, but, suffice it to say that the Applicant also failed to demonstrate any practical difficulty in complying with the Zoning Regulations.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has failed to satisfy the burden of proof with respect to the application for variances from the nonconforming structure provisions of § 2001, the floor area ratio requirement of § 402.4, the lot occupancy requirement of § 403.2, the rear yard coverage maximum of § 2500.3, and the accessory garage alley set-back provisions of subsection 2300.2(b). It is therefore **ORDERED** that the application be **DENIED.**

VOTE: **2-3-0** (Curtis L. Etherly, Jr., John A. Mann, II, and Zoning Commission member, Gregory Jeffries, to deny. Geoffrey H. Griffis and Ruthanne G. Miller to grant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members has approved the issuance of this Order denying this application.

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

FINAL DATE OF ORDER: JUN 16 2005

UNDER 11 DCMR 3125.9, "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 FOR THE BOARD OF ZONING ADJUSTMENT.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 17090

As Director of the Office of Zoning, I hereby certify and attest that on JUN 16 2005 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:

JERRILY R. KRESS, FAIA
Director, Office of Zoning