GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17124 of Howard Heu (Parkhill, Inc.), pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, and a variance from the off-street parking requirements under subsection 2101.1, to allow the construction of a new flat (two-family dwelling) in the R-4 District at premises 601 Massachusetts Avenue, N.E. (Square 866, Lot 809).

HEARING DATE: **March 16, 2004**
DECISION DATE(S): **May 4, 2004, June 8, 2004, and July 6, 2004**

DECISION AND ORDER

Howard Heu, the property owner ("Applicant") filed an application with the Board of Zoning Adjustment ("Board") on December 8, 2003, for a variance from the lot occupancy provisions of § 403.2, and a variance from the off-street parking requirements under subsection 2101.1, to allow the construction of a new two-family flat over and in the rear of an existing laundry.

Preliminary Matters

Self-Certification William J. Maiden, the Applicant's architect, self-certified the zoning relief requested (Exhibit No. 7).

Notice of Application and Public Hearing Pursuant to 11 DCMR 3113.3, the Office of Zoning (OZ), by memoranda dated December 18, 2003, notified the City Council member for Ward 6, Advisory Neighborhood Commission (ANC) 6C, the ANC member for Single Member District (SMD) 6C07 and the District of Columbia Office of Planning (OP) of the filing of the application. On January 12, 2004, OZ mailed notices of the public hearing to the ANC, the Applicant and all of the owners of property within 200 feet of the subject property, advising them of the date of hearing. Furthermore, the Applicant's affidavit of posting indicates that on March 3, 2004, it posted on the subject property three zoning posters at 601 Massachusetts Avenue, N.E., in plain view of the public.

Request for Party Status There were no requests for party status.

Applicant's Case The Applicant, testified with regard to the history of the property and how he acquired it. Further, he testified as to his proposal to maintain the existing one-story pick-up/drop-off laundry building and construct a flat over it and in the rear of

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the property. Mr. William J. Maiden, the Applicant's architect, testified with regard to the construction design and building dimensions of the project. Mr. Lindsley Williams, a land use planning and zoning consultant to the Applicant, assisted the Applicant in the presentation of his case.

Government Reports The Office of Planning submitted a report to the Board dated March 5, 2004. OP recommended that the Board grant the parking variance relief if the lot area variance relief were granted, based on the fact that making a curb cut on both streets, as would otherwise be necessary, would be incompatible with the character of the neighborhood and contrary to the policies of the Historic Preservation Act. OP stated that it could not, however, recommend the granting of the lot occupancy area relief because the Applicant had not shown an exceptional situation or condition of his property, nor had he shown the required practical difficulty arising from such condition. OP stated that a proposal of less intensity might be approved if the Applicant revised his proposals.

After reviewing the Applicant's additional information, including revised plans, OP prepared a Supplemental Report dated June 28, 2004. OP noted that the revised plans reduced the impact of the proposed addition on the adjoining rear yard of 603 Massachusetts Avenue, N.E., but the lot occupancy relief sought was not changed. OP again recommended denial of the lot occupancy variance as the conditions had not changed substantially with the new design; and the Applicant had still not met the burden of proof for an area variance. By letter dated December 12, 2003, the Historic Preservation Review Board (HPRB) determined that the existing building did not contribute to the character of the Capitol Hill Historic District. In addition, HPRB would not approve a curb cut to accommodate on-site parking (Exhibit 5).

ANC Report By letter dated March 9, 2004, ANC 6C indicated that at a February 11, 2004 meeting, with a quorum present, ANC 6C voted to support the Applicant's request for a variance from the off-street parking requirements, but did not support the requested variance to the lot occupancy requirement (Exhibit 25). By letter dated March 11, 2004, ANC 6C indicated that at a Wednesday, March 10, 2004 meeting with a quorum present, it voted to reconsider its vote of February 11, 2004 on the case. ANC 6C supported the Applicant's request for an area variance from the provisions of subsection 2100.1 to allow zero parking spaces where one is required in the R-4 District. It also supported the Applicant's request for an area variance from the lot occupancy provisions of subsection 403.2 to allow lot occupancy of approximately 67%, on the conditions that: the lot occupancy not extend south of the northern most point where the two side yards are parallel (approximately at the outside edge of the neighboring back porch); the Applicant remove the existing concrete block shed at the rear of the premises; the Applicant replace the existing concrete block wall parallel to 6th Street with an appropriately designed fence; no windows are allowed on the east wall (adjoining 603 Massachusetts Avenue, N.E.) of the building; and that the ANC and HPRB approve the design of the addition.

(Exhibit 28). In a letter dated June 1, 2004, the ANC reported the result of another vote taken at its meeting on May 12, 2004. Although the ANC stated that it reaffirms its position supporting the variances with conditions set forth in its March 11, 2004 letter, the ANC modified the position it had taken in its March 11, 2004 letter. The June 1, 2004 letter indicates that the ANC took the position that the Applicant has not met the standard for a lot occupancy variance to build two residential units along with the existing cleaners. The ANC's support appears to be limited to a plan for one residential unit and the existing cleaners. (Exhibit 39).

Parties and Persons in Opposition By letter dated March 12, 2004 (Exhibit No. 29), the Capitol Hill Restoration Society (CHRS) opposed the application for a variance from the lot occupancy requirements. Mr. Richard J. Muringer, a resident of 605 Massachusetts Avenue, N.E. in a letter dated March 3, 2004 (Exhibit 24), said that his concern was the blocking off of the alleyway running behind 603 and 605 Massachusetts Avenue, N.E. He said further that any obstruction to access the rear of his and other properties should be taken into consideration when granting off-street parking spaces.

Hearing The public hearing on the application was held and completed on March 16, 2004. The Board left the record open to receive additional information from the Applicant. The Board requested that the Applicant serve ANC 6C all post-hearing documents.

Decision Meetings The Board scheduled its first decision meeting on the application for May 4, 2004. By letter dated April 16, 2004 (Exhibit 35), the Applicant, supported by ANC 6C (Exhibit 36), requested a continuance, which the Board granted to June 8, 2004. The Applicant requested the continuance in order to allow ANC 6C to review and comment on additional documents it received from the Applicant. At the decision meeting on June 8, 2004, the Board requested that the Applicant provide additional information including the site plan with building footprint, revised building floor plans of the first and second floors, and new calculations. The Board also requested that the Office of Planning submit a supplemental report by July 6, 2004. On July 6, 2004, the Board granted the application in part and denied it in part by a vote of 4-0-1.

FINDINGS OF FACT

The Subject Property:

1. The subject property is located at 601 Massachusetts Avenue, N.E. (Square 866, Lot 809) in the Capitol Hill neighborhood of Ward 6. The site is improved with a one-story building that is used as a drop-off/pick-up laundry. The property is located in the Capitol Hill Restoration District; but it has not been deemed to be contributing to the character of the historic district nor has it been designated a historic landmark.

2. The subject property is located in the R-4 District. The primary purpose of the R-4 District is to stabilize remaining single-family dwellings. 11 DCMR subsection 330.2. The zone also allows flats, which are dwellings for two families, as a matter-of-right. Subject to density restrictions, the R-4 District also allows conversions of buildings and other structures built prior to May 1958 to an apartment house. Such conversions are permitted only if the lot area equals or exceeds 900 square feet per apartment unit.

3. The subject site is designated on the Comprehensive Plan's Generalized Land Use Map as Moderate Density Residential.

4. The lot is improved with a one-story building that was built prior to the May 12, 1958 effective date for the current Zoning Regulations in the District of Columbia. It has never been used for residential purposes. The record is uncertain as to the building's total area, and there is no exact information on the amount of it that protrudes past the property line along its Massachusetts Avenue frontage, but it is not more than two feet. The area of the building is in the range of 600 to 700 square feet. The building is currently used as a dry cleaning establishment. That use, which was authorized by the Board of Zoning Adjustment in 1996 in BZA Case No. 16125, replaced its prior use as a barber shop. In BZA Case No. 16125, the Board granted the Applicant's request for a variance from the use provisions (subsection 330.5) of the Zoning Regulations to allow a dry cleaning pick-up store in the one-story building.

5. The building occupies most of the Massachusetts Avenue frontage but less than one fourth of the frontage along Sixth Street. The building's face along Sixth Street turns within twenty-five feet of the Massachusetts Avenue property line and then runs perpendicular to Massachusetts Avenue, establishing a small triangular-shaped area open to the sky, either a court yard or a side yard. The entrance to the building is at the intersection of Massachusetts Avenue and Sixth Street, N.E., where it is recessed under a roof at an angle of 45 degrees to Massachusetts Avenue, NE. The only other existing doorway to the building is located along the building's southern face, and opens into the rear yard. The rear yard is contained behind an eight-foot high wall of concrete block construction with two gates, one near the rear of the existing building and one at the southern end of the Sixth Street property line. A wooden fence of equal height to the concrete wall separates lots 809 and 808. A storage shed occupies the full width of the rear yard but is removed from the southern "stub" of the property by approximately five feet; it does not encroach on the southern-most three feet of lot 809 that abuts either lots 46, 803 or 808.

6. The size of the lot, 1,540 square feet, is less than the minimum size for lots in the R-4 zone district for any use (§401.3), including conversions to apartments (three or more dwelling units in a single building), which require 900 square feet of land per apartment. The width of the lot along its Massachusetts Avenue frontage, at 34.87 feet, exceeds the minimum width requirements for row dwellings and flats and for one-family dwellings, but is less than that for all structures other than buildings converted to apartments (for which there is no specified minimum width). As currently used, the lot contains fewer square feet than is required for any lot on which a building is to be allowed by right in the R-4 District and is not as wide as required for its present type of use. The lot is, thus, a non-conforming lot the configuration of which dates back continuously to a time prior to the establishment of the Zoning Regulations.

7. Owing to the configuration of the lot and its narrow depth along Sixth Street, the Applicant cannot provide a parking space.

8. The creation of a driveway and a curb cut to the lot, if a parking space were created, would remove at least one parking space along Sixth Street in an area where public parking is already at a premium.

The Proposed Development and the Lot Area Variance

9. The maximum matter-of-right lot occupancy for a row dwelling, a flat, a church or a public school in a R-4 District is 60% and 40% for all other structures, under section 403.

10. The Applicant proposes to develop the subject property by constructing two residential units above the existing one-story structure currently used as a pick-up and drop-off laundry. The addition would extend back to within 18.89 feet of the rear property line. The existing shed would be razed. The completed project would be three stories with several bay projections into public space and three sets of stairs projecting into public space, one on Massachusetts Avenue and two on 6th Street, N.E. Each of the two upper floors would have one dwelling unit. The completed mixed use structure would be approximately 3,700 square feet of lot area for a total lot occupancy of 80%.

Parking Variance

11. The Applicant is required to provide one off-street parking space for each three dwelling units. 11 DCMR § 2101.1.

12. The lot is unique in shape. Its size is small, with no alley access.

13. The shape, size and limited access, create a practical difficulty in providing an on-site parking space for any matter-of-right development of the property.

14. The matter-of-right use of this property is consistent with the intent of the zone plan, the character of the R-4 District, and the public good. The creation of a curb cut on 6th Street would be required to provide parking on the site, but would be incompatible with the character of the neighborhood.

CONCLUSIONS OF LAW

The Board is authorized to grant a variance 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, 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...." D.C. Official Code § 6-641.07(g) (3) (2001); 11 DCMR §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 Lot Occupancy Variance

The Applicant requests an area variance from the lot occupancy requirements, which limit the matter-of-right lot occupancy for a row dwelling, a flat, a church or a public school in a R-4 District to 60% and to 40% for all other structures, under section 403. The Applicant also requests a variance from the off-street parking requirements under subsection 2101.1 to construct a new flat consisting of a two-family dwelling. Based on the record herein, the Board is constrained to conclude that the Applicant failed to show any extraordinary or exceptional situation or condition of the subject property with respect to the granting of a variance for the lot occupancy requirements.

Although the lot has a unique shape that narrows to an approximately 12-foot wide strip, a substantial portion of the property, the Applicant has failed to demonstrate the strict

application of the zoning regulation would result in peculiar and exceptional practical difficulties that would prevent reasonable development of the property..

Adequate space and lot width are available for less intensive matter-of-right development at the site. Indeed, by virtue of the prior use variance, the Applicant is already enjoying a more intensive use of the property than is otherwise permitted. In addition, The Applicant may accommodate residential use on the site by either replacing the commercial use with residential use or by adding a single residential unit (as opposed to two residential units) on top of the existing commercial building, without requiring the excessive extent of the relief sought.

Accordingly, the Board concludes that either the continuation or elimination of the nonconforming use would allow for full enjoyment of this residentially zoned property without the need for variance relief.

A variance can be granted only if this can be accomplished "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 R-4 District is a residence zone that is not intended to "be an apartment house district as contemplated under the General Residence (R-5) districts, since the conversion of existing structures shall be controlled by a minimum lot area per family requirement." 11 DCMR § 330.3.

The Board concurs with the Office of Planning that three units, including one devoted to commercial, should be deemed a multifamily dwelling, and not a flat. However, because this intensification is not consistent with lot occupancy controls, its establishment would be inconsistent with the intent of the R-4 Zone District.. Further, the Board agrees with OP that the increased intensity of the proposed use would generate additional parking, trips and loading problems, though minimally, in an area that is experiencing traffic congestion and parking shortages and therefore would be inconsistent with the objectives and policies of the Comprehensive Plan to stabilize and improve neighborhoods. For these reasons, the Board concludes that the project, as approved, could negatively affect the public good and would substantially impair the intent, purpose, and integrity of the zone plan as embodied in the regulations

Parking Variance

Pursuant to 11 DCMR § 2101.1, the Applicant would have to provide one off-street parking space for each three dwelling units. The Board is persuaded that the lack of parking space at the site will not have a detrimental effect on the surrounding community, nor on the zone plan or regulations. The redevelopment of the property with an attractive structure compatible with the neighborhood character could not occur without the granting of a variance to subsection 2101.1. A curb cut on 6th Street to provide a

parking space would be incompatible with the character of the neighborhood and would likely not meet HPRB approval. OP recommended approval of the parking variance. ANC-6C is also supportive of a parking variance to allow the attractive redevelopment of the property.

ANC and OP Great Weight

The Board, as required, accorded "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. DC Official Code §§ 1-309.10(d) and 6-623.04 (2001). The Board concurs with OP's concern that the grant of the lot area variance would impair the intent, purpose, and integrity of the Zoning Regulations and Map. Although upon reconsideration, ANC-6C voted to support the grant of a variance to the lot occupancy provisions, that support was conditioned upon the proposed structure meeting several conditions, not all of which were agreed to by the Applicant. These conditions were aimed at minimizing the visual impact of the expanded structure and the parking impact of the additional residential use. The Board concurs with these concerns in denying the lot occupancy variance.

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 a variance from the lot occupancy requirements under section 403, but that the Applicant has met the burden of proof with respect to the application for a variance from the off-street parking requirements under subsection 2101.1 at the premises 601 Massachusetts Avenue, N.E.

Therefore, it is **ORDERED** that the application be partially **DENIED** with respect to the variance from the lot occupancy requirements, and be partially **GRANTED** with respect to the variance from the off-street parking requirements.

VOTE: **5-0-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, Carol J. Mitten (by absentee ballot), and John A. Mann II (by absentee ballot) to deny the lot occupancy variance request).

VOTE: **4-1-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller and Carol J. Mitten (by absentee ballot) to grant; John A. Mann II (by absentee ballot) to deny the off-street parking variance request).

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: NOV 05 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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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. JS/rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 17124

As Director of the Office of Zoning, I hereby certify and attest that on NOV - 5 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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ATTESTED BY: **JERRILY R. KRESS, FAIA**
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