GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17125 of Krister and Carol Holladay pursuant to 11 DCMR § 3103.2 for a variance from the lot occupancy requirements under section 403, to allow the construction of a one story rear addition to a single-family row dwelling in the CAP/R-4 District at premises 507 Independence Avenue, S.E. (Square 843, Lot 20).

HEARING DATE: March 16, 2004
DECISION DATE: March 16, 2004

DECISION AND ORDER

This application was submitted on December 23, 2003 by Meghan Walsh, AIA agent on behalf of the owners of the property that is the subject of the application, Krister and Carol Holladay (collectively, "Applicants"). The self-certified application requested a variance to the lot occupancy requirements to allow the construction of a one-story rear addition to a single-family row dwelling at 507 Independence Avenue, S.E.

Following a hearing on March 16, 2004, the Board voted 4-1-0 to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. The Office of Zoning mailed a notice of this application to the Councilmember for Ward 6, the Office of Planning ("OP"), the Department of Transportation, Advisory Neighborhood Commission ("ANC") 6B, and Single Member District ANC 6B 02, as evidenced in a memoranda dated December 24, 2004. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters or memoranda dated January 12, 2004, to the Applicants, ANC 6B, and all owners of property within 200 feet of the subject property, providing notice of the hearing.

Requests for Party Status. ANC 6B was automatically a party in this proceeding. There were no requests for party status.

Applicants' Case. The Applicants and their architect, Meghan J. Walsh, stated that the variance was needed to allow construction of a one-story addition to the rear of a single-family row dwelling which would increase the living space in the

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house by enlarging the family room and the kitchen and creating circulation to the rear of the dwelling without requiring that one exit through the kitchen. The planned addition would be similar in appearance to the existing house. The Board received letters in support of the application from neighbors on both sides of the Applicants, and one neighbor around the corner.

Government Reports. By memorandum dated March 1, 2004, OP recommended denial of the requested variance from the lot occupancy requirements of 11 DCMR §403. OP believed that the lot occupancy relief request was excessive in that it sought 15% more that what is permitted as a matter of right. OP indicated it would recommend approval of the application if the lot occupancy was reduced to 70%, which would be consistent with the maximum lot occupancy allowed for additions to single family dwelling through the special exception process permitted by 11 DCMR § 223.

ANC Report. The ANC did not submit a report.

FINDINGS OF FACT

1. The subject property is a row dwelling located at 507 Independence Avenue, S.E.(Square 843, Lot 20) in the Capital Hill Historic District and is zoned R-4. The site is improved with a three-story row dwelling that was built in 1886.

2. The structure sits on a rectangular lot measuring approximately 1,393 square feet. The lot size is smaller than many of the lots with row dwellings in the square.

3. The structure is the center dwelling of three similar houses. The three structures were built on one lot and operated as boarding houses.

4. The row dwellings' front two rooms were designed to be used for transient guests, and have large sleeping rooms located on the upper floor. The kitchen and servant rooms were more austere and located at the back of the dwelling. The front and the back of the house were intended to function separately. The boarding house design does not adequately accommodate a family with children.

5. The two row dwellings immediately adjacent to the Applicants' house are on lots that are approximately same size parcels as the Applicants' lot.

6. Each of the three-story row dwellings has a narrower two story extension into the rear yard and an open courtyard on the west-side of the property.

The courtyard for the subject property is a non-conforming courtyard which is 5'- 3" wide. The courtyard is practically unusable.

7. There is no alley access to the rear of the property. The rear of all of the properties in the square abut other properties. The rear yard of the subject property is surrounded by wooden fences 6 to 7 feet in height.

8. The Applicants propose to build a one-story, addition to the first floor rear of the house to enlarge the family room and kitchen and create circulation to the rear of the house without going through the kitchen. The addition would occupy what is presently the nonconforming open courtyard, and extend to the party wall shared with the neighboring row dwelling on the west side of the property. The neighbor to the west does not have any windows in the party wall to which the addition would be extended.

9. Eliminating the court would resolve persistent basement flooding caused by an inadequately sized drain. The Applicants must continuously sand-bag the basement to keep it dry. In addition, the existence of the court results in poor heating and cooling.

10. A row dwelling in an R-4 zone district may not occupy more than 60% of its lot.

11. The existing structure occupies 64% of the lot.

12. The proposed addition would increase the lot occupancy to 75%.

13. Pursuant to 11 DCMR § 223, owners of single family dwellings may apply for special exception relief to increase the lot occupancy up to 70% in order to build additions.

14. Designing this addition so as to be eligible for special exception relief was not a realistic alternative. In order to accommodate 70% lot occupancy, the Applicants could not fully enclose the entire court area. This would entirely frustrated their desire to create circulation through that space. In additon, the proposed redesign of the kitchen was dependant upon moving the rear entrance from its present location to the proposed addition.

CONCLUSIONS OF LAW

The Applicants are seeking an area variance under 11 DCMR § 3103.2 to allow construction of a one-story addition on the rear of a row house in the R-4 zone. To

make the desired renovations, the Applicants need a variance from the lot occupancy requirements under section 403.

The Board is authorized to grant a variance from the strict application of the Zoning regulations under section 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat., 797, 799); D.C. Official Code § 6-641.07(g) (3) (2001). To qualify for an area variance the Applicants must establish 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 Applicants 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 plane. *See Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990).

In order to prove "practical difficulties," the Applicants 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 Applicants' property does not comply with requirements pertaining to maximum lot occupancy and open court dimensions. The proposed addition would eliminate the open court, but increase the lot occupancy beyond that which is allowable as a matter of right.

The maximum permitted lot occupancy for a row dwelling in an R-4 zone is 60 %. 11 DCMR § 403.2. The lot occupancy with the planned addition would be 75%.

The structure was built to be operated as a boarding house. The room layout was influenced by the intent to use the row houses as boarding houses. The front two rooms and the sleeping rooms above them were generously sized for the guests. The kitchen area on the first floor is small and is connected by a stairway to the little bedrooms on the second floor which were used by the servants. The front and back of the house were intended to function separately. As a result the structure functions poorly as a single family home. Based on the testimony of the Applicants and their architect, it appears that there are only two other row houses in this square with a similar design. In addition, the undersized court serves no purpose other than to flood the Applicants' basement and create an area where heat and cold seep through.

Constructing an addition in place of the court is the only practical solution to both problems. Yet, because subject property is also on a smaller lot than most of the row dwellings in the square, the full enclosure of the court would increase lot occupancy beyond that permitted even by special exception pursuant to 11 DCMR § 223. The Board does not agree with the Office of Planning that the circulation

and heating/cooling issues could have been remedied by a design compatible with the 70% lot occupancy limitation of § 223. Any design that kept lot occupancy below 70% would have resulted in some portion of the court remaining, which would mean there could be no full corridor and no new rear entrance to the dwelling. The problems with circulation, flooding, heating and cooling would remain.

The fact that the two adjoining townhouses may also be subject to the same characteristics as are present in the Applicant's case is not an impediment to a finding of uniqueness. The requirement that the property be unique does not mean that the property must be the only property that is affected in a particular way. It need only be established that "it seems unlikely that many properties would be affected in this particular way, so that these particular types of variances would be required for a large number of properties and, if granted, constitute a de facto amendment of the zone plan." *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (DC 1990).

The planned addition will not adversely affect the availability of light or air to neighboring properties. The enlargement, which is relatively small, will be located at the rear where there is no alley access, and will extend to a party wall where there are no windows. Since there are no windows on the neighboring north side property that face the addition, the addition will not compromise the privacy of use and enjoyment of neighboring properties. Moreover, since the addition is one that could be made by many of its neighbors without a variance, allowing a lot occupancy of 75% in this case will not impair the intent, purpose and integrity of the zone plan.

The addition will not visually intrude on the character, scale, or pattern of row dwelling along the street frontage. The one-story addition will be built at the rear of the property and will not be visible from the street. Additionally, since the rear of the property has a fence that is 6 to 7 feet tall, the rear addition will not be visible from ground level in the rear. Finally, the difference between a lot occupancy of 70% that would be permitted under a special exception pursuant to 11 DCMR § 223 and the 75% that is being requested as a variance is *de minimis*.

The Board believes that the Applicants seek to do not more than the owners of a somewhat larger lot customarily accomplish through section 223 relief. The design of this house cannot be adapted to make it compatible with modern family life without granting the relief sought. The variance granted is no more than necessary to resolve the problems identified and stems directly from the smallness of the lot, which the Board finds to be exceptional.

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 to allow construction of a one-story addition to the rear of a row house in an R-4 zone.

Accordingly, it is therefore **ORDERED** that the application is **GRANTED**.

VOTE: **4-1-0** (Geoffrey H. Griffis, John A. Mann II, Curtis L. Etherly, Jr., and Ruthann Miller voting to approve. Carol J. Mitten voting to deny).

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

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

FINAL DATE OF ORDER: OCT 19 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.

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. RSN

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BZA APPLICATION NO. 17125

As Director of the Office of Zoning, I hereby certify and attest that on OCT 19 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: Jerrily Kress
JERRILY R. KRESS, FAIA
Director, Office of Zoning