GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17136 of Africare, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, and a variance from the rear yard requirements under section 404, to allow an addition to an existing headquarters office of a charitable organization in the R-4 District at premises 440 R Street, N.W. (Square 509, Lot 805).

HEARING DATE: March 30, 2004
DECISION DATE(S): May 4, 2004

DECISION AND ORDER

Africare, the property owner ("Applicant") filed an application with the Board of Zoning Adjustment ("Board") on January 20, 2004, for a variance from the lot occupancy provisions of section 403.2, and a variance from the rear year requirements under section 404.1, to allow the construction of an addition to an existing headquarters office of a charitable organization.

Preliminary Matters

Self-Certification The Applicant's attorney, George R. Keys, Jr. filed a self-certification form on behalf of the Applicant for the zoning relief requested.

Notice of Application and Public Hearing Pursuant to 11 DCMR 3113.3, the Office of Zoning (OZ), by memoranda dated January 20, 2004 notified the Councilmember for Ward 6, Advisory Neighborhood Commission (ANC) 2C, the ANC member for Single Member District (SMD) 2C02 and the District of Columbia Office of Planning (OP) of the filing of the application. On January 29, 2004, OZ mailed notices of the public hearing to the Applicant, the ANC 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 February 20, 2004, it posted two zoning posters at 440 R Street, N.W. in plain view of the public.

Request for Party Status On March 16, 2004, Barry Krieiswith who resides at and is the owner of 427 Warner Street, N.W., filed an application for party status. Mr. Krieiswith's property is located across the alley, approximately 30 feet from the Applicant's property. The Board granted Mr. Kriesiwith's request for party status.

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Applicant's Case The president of the Applicant testified with regard to the history of the property and how the property is being used. Joseph Handwerger, the applicant's architect, testified with regard to the construction design and building dimensions of the project. The Applicant was represented by George Keys, an attorney.

Government Reports The Office of Planning submitted a report to the Board dated March 5, 2004. OP recommended that the Board deny the requested variance relief because the Applicant failed to establish that it met the test for the requested relief. According to OP, the Applicant had not shown an exceptional situation or condition of its property, nor had it established that there was a practical difficulty arising from such condition. OP stated that an annex could be redesigned to comply with the lot occupancy and rear yard requirements of the Zoning Regulations. OP also was concerned about the intensity of use of the property and its potentially adverse impacts on the surrounding community because of the potential for an increased number of employees and visitors.

ANC Report The ANC did not file a report.

Parties and Persons in Opposition Mr. Kriesiwith, who resides across the alley adjacent to the rear of the Applicant's property, opposed the application. Mr. Kriesiwith's argued that the Applicant should be seeking a use variance rather than an area variance because the previously granted use variance only covers the existing building, not an annex. Mr. Kriesiwith further indicated that even if the Board determines that an area variance, rather than a use variance is appropriate in this instance, the Applicant has failed to meet the requirements for an area variance.

Hearing The public hearing on the application was held and completed on March 30, 2004. The Board left the record open to receive additional information from the Applicant and the ANC's report if one was submitted.

Decision Meetings The Board scheduled its decision meeting on the application for May 4, 2004. On that day, the Board granted the application on a vote of 4-0-1.

FINDINGS OF FACT

1. The Applicant is a non-profit organization whose mission is to provide humanitarian and development assistance to the people of Africa. Its services cover a broad array of areas including, food security, agriculture, health, education, credit and environmental issues. Since its establishment

in 1970, the Applicant has given assistance to approximately 26 African countries

2. The subject property is located at 440 R Street, N.W. (Square 509, Lot 805) in the Shaw neighborhood of Ward 4. The site is improved with a two-story building with a basement that was built before the adoption of the 1958 Zoning Regulations. The building previously housed the Morse Public School.

3. The subject property is located in the R-4 District.

4. The lot is 18,318 square feet.

5. In its order of September 27, 1983, the Board granted the Applicant a use variance to use the former school as its headquarters' office.

6. In addition to serving as administrative space for Applicant's staff, each month, African diplomats use the site to hold monthly meetings and the annual meeting of the Diplomatic Core. The Applicant also makes meeting space available to the community and hosts visits by school children.

7. As a result of the expansion of its activities and staff, the Applicant has concluded that it needs additional space. Among the factors leading to this decision are the following:

   a. The growth of its headquarters staff has grown from 20 people to 58 employees;

   b. The inadequacy of the present office space and meeting rooms;

   c. The need to improve its financial management including the establishment of an auditing unit;

   d. The desire to establish an agricultural section on-site to compliment its agricultural staff in the field; and

   e. The efficiencies that would result from storing its records on-site instead of in off-site storage facilities, as is presently the case.

8. The needed expansion cannot be practically achieved through interior renovations of the former school building, which has large stairways and halls.

9. In 1999, the Board issued a Summary Order which granted the Applicant an area variance to build an annex similar to the one Applicant proposes to build in this application, but that order expired without the annex being constructed.

10. Instead, the Applicant proposes erecting an annex, similar to one that the Board approved in 1999 through Summary Order No. 16506.

11. The proposed annex, which will be three stories high and include two below–grade levels for parking and storage, will be 12,633 square feet. It will occupy what is presently the parking lot for the existing building. The two buildings will be joined by a covered portico. There will be a below-grade connection of the two buildings where the garage level of the annex is connected to the basement level of the Morse School building.

12. A public school building may not occupy more than 60% of its lot in an R-4 zone district. For all other structures, the maximum amount of lot that may be occupied is 40%. The lot occupancy of the existing building is 31.56%. Because the Applicant proposes to expand the former school building in order to accommodate office uses, the 40% limitation applied. The proposed annex would increase the lot occupancy by 16.8% to 56.8%.

13. The rear yard in an R-4 District must be a minimum of 20 feet. The rear yard is currently 14 feet and the Applicant wishes to maintain it at that level.

14. The Applicant will have 22 on-site parking spaces, 18 in the underground parking garage and 4 spaces at the rear of the annex.

15. The Applicant will have two structures on the roof, a cooling tower, measuring 8 feet x 10 feet x by 3 feet high with a surrounding screen that will be approximately 11 feet, and an elevator shaft roof and roof access hatch that will be less than 2 feet above the roof. The screen wall for the cooling tower will be made of metal panels on a steel framework.

16. The proposed annex will maintain the back yard at 14 feet and establishes a large courtyard that prevents the property from appearing congested and renders the annex more complimentary to the residential dwellings in the neighborhood.

17. The annex will include a lecture conference room that can accommodate approximately 100 people. This will not only alleviate the severe overcrowding that occurs during diplomatic meetings, but will permit the

Applicant to host lectures on Africa, accommodate visitors from the African continent, and allow for larger school visits and community events.

18. The Applicant's proposed annex will not interfere with the light and air of the adjoining property owners nor will its cooling tower, described in finding of fact 15, produce noise that will interfere with the neighbors' use and enjoyment of their property.

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 establish that there are "practical difficulties," *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 party in opposition, Mr. Barry Kreiswirth, argues that the Applicant should have sought a use variance. The Board disagrees. Once a use variance is granted, the use is considered conforming, and like any other conforming use, may be expanded so long as it complies with the area requirements of the Zoning Regulations. Industrial Lessors v. Garfield, 290 A. 2d 737 (NJ 1972); Rathkopf's The Law of Zoning and Planning § 73:29, at 73:123-126 (Ziegler, ed., 2002); and 1 Anderson's American Law of Zoning §6.01, 483 n.8 (K.H. Young, ed., 4th ed. 1996). Because the Applicant's plans diverge from the Zoning Regulations with respect to the lot occupancy requirements of § 403 and the rear yard requirements of § 404, area variances were properly sought.

Based on the record herein, the Board concludes that the Applicant has established the existence of an extraordinary or exceptional situation or condition of the subject property with respect to the granting of a variance for the lot occupancy and rear yard requirements.

The configuration of the existing building makes Applicant's property unique. That building, which was previously a public school, has large stairways and large halls. This design restricts the amount of space that is available for offices, meeting space, and storage. The Applicant's operation has outgrown its existing building. Presently, its offices are overcrowded by its current staff, and its meeting facilities are inadequate to accommodate the diplomatic meetings which it hosts monthly. Crucial functions such as having an auditing department, agricultural staff, and storage for records and art are not available in the existing building because there is insufficient room. The Applicant is a not-for-profit organization and has presented ample evidence that the proposed expansion is an institutional necessity. Such a showing constitutes a unique circumstance that is connected to the subject property. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091 (D.C. 1979). "[T]he need to expand an existing building may constitute the kind of exceptional condition of the property that justifies a variance." *Draude v. D.C. Board of Zoning Adjustment*, 527 A.2d 1242, 1255 (D.C. 1987).

The Applicant has shown the requisite practical difficulties. The current building in which the Applicant maintains its headquarters is too small to accommodate the Applicant's growing operation. Core functions such as auditing and storage are non-existent because there is no room for them. Regularly held meetings are conducted in inadequate meeting space. The current structure can not be reconfigured to house more office and meeting space because having been a school, it has large staircases and hallways, the alteration of which would be prohibitively expensive and detrimental to the character of the existing building. Such a design might also yield a building which may be in excess of the height restrictions.

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 Applicant has clearly met this test. First, the annex is located so it is aligned with the existing building in the rear so as to avoid a congested looking lot which would be out of character with the surrounding residential area. Compliance with the 20 foot set back would make the Applicant's buildings appear more massive, and it would be thus less complimentary to the residential district in which it is located. Second, since the Applicant allows community groups to use its facility and makes it available for tours by school children, the Applicant may more readily accommodate these visitors. Finally, the Applicant's stature as an international organization providing assistance to African nations raises the stature of the community in which it is located. Authorizing the expansion will enable the

Applicant to remain in the neighborhood and fulfill its mission. Although Mr. Kreiswirth has concerns about the noise that is made by the Applicant's compressors for the Applicant's existing building, the cooling facilities for the annex will be screened by a metal wall on the roof and at least 90 feet from Mr. Kreiswirth's property. Under these circumstances, the cooling tower on the addition should not increase the noise level for Mr. Kreiswirth's property. The Applicant's annex will not affect the light and air of the surrounding properties. There will be adequate parking for the property since the Applicant will be providing 22 parking spaces on site. Based upon these circumstances, the Board concludes that the project would not have a negative affect on the public good.

The addition would not substantially impair the intent, purpose, and integrity of the zone plan as embodied in the regulations. Although the Applicant's property is in an R-4 District, the Board granted Applicant a use variance in 1983 so that it could establish its office headquarters in the existing building, and in 1999 it approved plans for an annex that is substantially the same as those presented in this application. The Board again finds that this annex will not substantially impair the intent, purpose and integrity of the zone plan and the Zoning Regulations.

ANC and OP Great Weight

The Board, as required, accorded "great weight" to issues and concerns raised by the affected ANC and to the written recommendations made by OP. DC Official Code §§ 1-309.10(d) and 6-623.04 (2001). The ANC did not submit a written report.

OP opposed the application because it believed that the Applicant has not established that it meets the requirements for an area variance. In its opinion, the Applicant can erect an annex that complies with the rear yard and lot occupancy requirements of the Zoning Regulations. OP further also felt that the intensity of use was not compatible with an R-4 District. For the reasons stated in the conclusions of law, the Board disagrees with this analysis.

Based on the record before the Board and 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 lot occupancy requirements under section 403 and the rear yard requirements of 404 at the premises located at 440 R Street, N.W.

Therefore, it is **ORDERED** that the application be **GRANTED** with respect to the variance from the lot occupancy and rear yard requirements.

VOTE: **4-0-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, and John Mann II to grant the lot occupancy and rear yard variance request, the Zoning Commission member not participating, not voting).

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: FEB 2 8 2005

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.

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BOARD OF ZONING ADJUSTMENT

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As Director of the Office of Zoning, I hereby certify and attest that on FEB 28 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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