GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17154 of Bruno B. Freschi, pursuant to 11 DCMR § 3103.2 for a variance from the lot width and lot area requirements under section 401, a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, and a variance from section 401.6 from the street frontage requirements to allow the construction of a single-family row dwelling in the FBOD/R-3 District at premises rear of 935 26th Street, N.W. (Lot 95, Square 16).

HEARING DATE: May 4,2004
DECISION DATE: June 8, 2004

DECISION AND ORDER

The Applicant in this case is Bruno B. Freschi, the owner of the property located at rear of 935 26th Street, N.W. (Lot 95, Square 16) (the "Property"). Mr. Freschi filed an application with the Board of Zoning Adjustment on February 20, 2004 for area variances under 11 DCMR § 3103.2, to allow the construction of a single-family row dwelling on the Property, which is located in the FBOD/R-3 District. Except for the relief under section 401.6[1], the zoning relief requested in this application is self-certified pursuant to 11 DCMR § 3113.2. Following a public hearing, the Board voted 4-1-0 on June 8, 2004 to approve the application.

PRELIMINARY MATTERS

Application. The application requests area variances under 11 DCMR § 3103.2, to allow the construction of a single-family row dwelling on an alley lot in the FBOD/R-3 District. The original application proposed by Bruno Freschi (the "Applicant") requested variances from the lot area, lot width, lot occupancy, height, and rear yard requirements of the zoning regulations. Prior to submitting the current application, Mr. Freschi obtained concept approval of the proposed project from the Historic Preservation Review Board. As a result of the HPRB design review process, Mr. Freschi lowered the height to meet matter-of-right guidelines. Accordingly, the Applicant withdrew his request for the height variance during the public hearing.

Notice of Application and Notice of Hearing. By memoranda dated February 25, 2004, the Office of Zoning advised the D.C. Office of Planning, the Zoning Administrator, the Department of Transportation, the Councilmember for Ward 2, and the Advisory Neighborhood Commission (ANC) 2A, the ANC for the area within which the subject property is located, of the application. The Board scheduled a public hearing on the application for May 4, 2004. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on February 26, 2004, mailed the applicant, the owners of all property within 200 feet of the subject property, and ANC 2A notice of the May 4th hearing. Notice was also published in the D.C. Register. The Applicant's affidavit of posting

[1] The Board voted to amend the application to include relief under this section on its own motion.

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and maintenance indicates that two zoning posters were posted beginning on April 19, 2004, in plain view of the public.

Requests for Party Status. ANC 2A was automatically a party in this proceeding. The Board granted party status in opposition to the application to the Foggy Bottom Historic District Conservancy ("FBHDC"), members of which reside in the immediate area of the subject property. The Board granted this request, over the objection of the Applicant, based upon the FBHDC's unique interest in the proposal's impact on the zone plan. The Board also granted party status in opposition to Lisa Farrell, who resides at 2523 Queen Anne's Lane, N.W., adjacent to the subject property. The Board denied party status to Dr. Nam Pham, who filed a request but did not appear at the public hearing.

Applicant's Case. The Applicant presented testimony and evidence from Bruno B. Freschi, an architect recognized by the Board as an expert in architecture, regarding the Property, the proposed project, and the HPRB review process. The Applicant also presented testimony from Gladys Hicks, recognized by the Board as an expert in zoning, about the zoning implications of the proposed project.

Office of Planning ("OP") Report. OP submitted a report and testified that it had reviewed the application for compliance with the standards for granting an area variance. In its report dated April 27, 2004, the OP recommended that the application be approved with respect to variances relating to lot area and lot width and that the application be denied with respect to the requested lot occupancy and rear yard setback. OP observed that a side yard setback may be required and that a special exception may be required for the roof structure setback. During the public hearing, OP testified that the application was referred to the National Park Service and Water and Sewer Authority. The National Park Service noted no concern with the proposed project. The Water and Sewer Authority also noted no concern, provided neither water nor sewer pipes are installed to the garage.

Department of Housing and Community Development ("DCHD") Report. DHCD reviewed the application and recommended against approval, finding Square 16 is already densely developed. DHCD expressed concern that the size and scale of the proposed house is too large for the existing lot. It also expressed concern that the proposed house will affect the light, air, and views of the adjacent apartment buildings and alley dwellings.

ANC Report. ANC 2A, at its regularly scheduled meeting held on April 21, 2004, voted 3-0 to support the application for all requested variances. The ANC report noted with approval that Mr. Freschi had modified the project to accommodate changes suggested by HPRB and the Commission of Fine Arts.

Party and Persons in Opposition to the Application. Lisa Farrell, the owner of a row dwelling located at 2523 Queen Anne's Lane, testified in opposition to the application. She expressed concern that the project would adversely affect the light and air, privacy, and the property value of her home. FBHDC also testified in opposition to the application, arguing that the lot was too small for a dwelling, that the proposed project does not qualify as a row house, and that the applicant failed to demonstrate undue hardship. The Board received letters in

opposition to the application from members of the surrounding neighborhood. Generally, these letters argued that the application should be denied because it requests too many variances.

Closing of the Record. The record was closed at the end of the hearing, except for specific documents requested by the Board. The Board requested that the Applicant provide information demonstrating the date of subdivision of Lots 94 and 95. The Applicant submitted a copy of the subdivision plat, which demonstrated that the subdivision occurred on January 6, 1969.

FINDINGS OF FACT

A. The Property and the Surrounding Area.

1. The property that is the subject of this application is Lot 95 in Square 16, located at the premises known as rear of 935 26th Street, N.W. The Property is an alley lot located behind and to the east of 935 26th Street, N.W. (Lot 94 in Square 16). Lot 94 is improved with a four-story, 1970s, single-family row dwelling, which also is owned and occupied by the Applicant. Immediately to the south of the Property, are two of the 1960s three story, brick, row dwellings that front on Queen Anne's Lane. Immediately to the north is a four-story apartment building. The Property abuts Hughes Mews, a thirty foot wide alley, to the east. Across the alley to the east is an eight-story apartment building.

2. The Property is 18.17 feet wide, 51 feet deep and has a square footage of only 926.67 square feet. It presently is paved with asphalt. In the past, it has been used for parking by the previous owner of Lot 94, the adjacent lot, and other residents of Hughes Mews.

3. Lot 94 is improved with a four-story, 1970s, single-family row dwelling, which also is owned and occupied by the Applicant. Immediately to the south of the Property are two of the three-story brick row dwellings that were constructed in the 1960s as part of the Hughes Mews development that fronts on Queen Anne's Lane. Immediately to the north is a four-story apartment building. The Property abuts Hughes Mews, a thirty-foot wide alley, to the east. Across the alley to the east is an eight-story apartment building.

4. The area is essentially residential with a mix of densities, including major, ten-story condominiums and smaller, single-family row dwellings.

5. Pursuant to Zoning Commission Order No. 714, effective April 17, 1992, the Property is included within the Foggy Bottom Overlay District (FBOD) with an underlying R-3 zone designation. Prior to that Order, the Property was located in the R-5-B Zone District. The Property also is located in an historic district.

6. The subject property was created in 1969 as a result of a subdivision. Lots 94 and 95 at one time comprised a single lot. The lot was subdivided per a subdivision plat dated January 6, 1969. Because the lot was created after 1966, it is subject to the street frontage requirements of section 401.6 if it is "to be used and occupied by a row dwelling".

7. Most of the row dwellings that constitute the Hughes Mews development are located on lots that are now nonconforming with respect to the requirements of the current R-3 zoning.

B. The Proposed Project

9. The proposed project will consist of a three-story, thirty-foot tall single-family row dwelling with a roof deck and a bay window. The dwelling will feature two bedrooms, a den, three bathrooms, and a garage.

10. The total square footage of the proposed row dwelling is between 1,700 and 1730 square feet.

11. The proposed project will be constructed from lot line to lot line and will provide no side yards and this meets the definition of a row dwelling.

B. The HPRB Process

12. The HPRB initially expressed concern about the proposed height of the house and the penthouse located on the roof. In response, the applicant lowered the height by 1.6 feet, which allows the proposed project to be constructed within the matter-of-right height requirements. The applicant also removed the equipment initially proposed to be housed on the roof and limited the use of the roof structure so as to provide only roof access. The applicant also relocated the roof access structure to the north side of the Property to reduce any impact on the row dwellings to the south.

13. The HPRB staff report and recommendation, which was adopted by HPRB, noted that Mr. Freschi had reduced the footprint and height of the proposed rooftop penthouse in response to HPRB's concerns. The report found that the Property's distance from any of the lower, historic buildings in the area, and the proximity of three and four-story non-contributing structures suggests that the height of the proposed building is not incompatible with the character of the historic district. The report recommended that HPRB approve the scale and general massing of the concept.

C. Zoning Relief Required

14. Under § 401.3, the minimum lot area for a row dwelling in the R-3 Zone is 2,000 square feet. The lot area of the Property is 926.67 square feet, which is 1073.33 square feet less than the 2000 square foot minimum lot area required under § 401.3.

15. The additional variance relief the applicant requests are minor. The applicant proposes a rear yard of 18 feet, which is only 2 feet less than the 20 feet required by § 404.1. The proposed project will have a lot occupancy of 63.3%, which is only 3.3% greater than the maximum lot occupancy of 60% permitted under § 403.2. The width of lot for the Property is 18.17 feet, only 1.83 feet less than the 20 foot requirement set forth in § 401.3.

16. Section 401.6 requires that each lot created after February 15, 1966, to be used and occupied as a row dwelling, shall have street frontage measured along the street a distance

equal to at least 40% of the required width of lot and in no case less than fourteen feet. "Street" is defined in § 199.1 as "a public highway designated as a street, avenue, or road on the records of the Surveyor of the District of Columbia." The proposed project provides frontage only on an alley, which is not a "street" under the above definition.

17. Section 2507 expressly permits the construction of a one-family dwelling on an alley lot that abuts an alley thirty feet or more in width and which provides access to a street through an alley or alleys not less than thirty feet in width. Hughes Mews, on which the Property fronts, is thirty feet wide and provides access to 26th Street, N.W. through Queen Anne's Lane, which also is thirty feet wide.

D. Exceptional Condition

18. The Board finds that the Property is affected by an exceptional and extraordinary situation in that it is exceptionally narrow and shallow, and it is extremely undersized. The lot is 18.17 feet wide and 51 feet deep and is less than 1,000 square feet in area. Although none of the nearby lots are large, this lot is small even by the standards in the area.

E. Practical Difficulty

19. Because of the exceptional and extraordinary narrowness and shallowness of the lot, it would be difficult for an architect to design a habitable, livable home that would provide adequate living space and adequate light and air without the additional rear yard and lot occupancy variances.

F. Lack of Substantial Impact

20. The Board finds that the granting of the requested variances would not create a detrimental effect on the zone plan or the neighborhood, because the proposed project represents a contextual design that reflects the height, massing, and window fenestration predominant in the area. Nor will it deprive Ms. Farrell of light and air. The proposed project will complement both the row dwellings located in the Hughes Mews development to the south and the existing modern, high-rise condominium and apartment buildings located to the north and east of the Property. Accordingly, the proposed project will provide an appropriate buffer between the row dwelling and high-rise uses. The three similar unattached row dwellings located on Hughes Mews demonstrate that the proposed row dwelling will not be out of context with the surrounding area simply because it is not attached on either side. The proposed bay window will not cause a substantial detrimental impact on neighboring properties because it does not exist at the ground level, has a footprint of only two feet, and is located to the north side of the Property, the side opposite the row dwellings to the south.

G. Consistency with Zone Plan

21. The Board finds the proposed project will be consistent with the zone plan.as the dwelling falls within the design plan for an R-3 District. Section 320.1 provides that the R-3 District is designed essential for row dwellings, but also includes areas within which row dwellings are mingled with one-family detached dwellings, one-family semi-detached dwellings, and groups of three (3) . Thus, the proposed row dwelling is consistent with the underlying R-3

Zone. The proposed project also is consistent with the goals of the FBOD, which include preserving the low-scale residential character of the area (§ 1521.1), providing a scale of development consistent with the low scale harmony of rhythmic residential townhouses (§ 1521.3(a)(2)), and enhancing the residential character of the area (§ 1521.3(c)). Based on the testimony of Mr. Freschi, Ms. Hicks, and ANC 2A, the Board finds that OP's concerns that the proposed project will increase the density in the area beyond what is contemplated in the Zoning Regulations are unfounded. The addition of a modest single-family dwelling in a residential Zone District will not adversely affect the density of the area.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799), as amended; D.C. Official Code § 6-641.07(g)(3) (2001), to grant variances from the strict application of the Zoning Regulations. As stated above, the applicant here seeks relief from the certain area requirements to allow construction of a new single-family dwelling.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate 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 applicant 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 plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove "practical difficulties," an applicant 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 Board concludes that the applicant has met the test for the granting of the requested area variance relief. It finds the subject property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in practical difficulties to the applicant, and that the intent, purpose, and integrity of the Zone Plan will not be impaired by granting the requested variances.

The Board concludes that the Property is affected by an extraordinary and exceptional situation in that the Property is exceptionally shallow, narrow and small. The Board also concludes that a strict application of the Zoning Regulations will result in practical difficulty to the applicant because no dwelling can be constructed on the Property without variance relief. In addition, the applicant faces practical difficulties in designing a project that will provide adequate light and air to the interior living space. As to the street frontage requirement, the Board finds that the unique zoning history of the property justifies the grant of this relief.

Finally, the Board finds that granting the requested variance relief will not cause substantial detriment to the public good and will not impair the intent, purpose, and integrity of the Zone Plan. Pursuant to 11 DCMR § 320, the R-3 Zone District is designed essentially for

row dwellings. The proposed project also furthers several goals of the Foggy Bottom Overlay District. The proposed project will maintain and enhance the low scale residential character of the neighborhood as described in 11 DCMR § 1521.2. It also will enhance the low scale harmony of rhythmic townhouses prevalent in the area. 11 DCMR § 1521.3(a). Moreover, the applicant has accommodated the concerns expressed by Ms. Farrell and FBHDC by lowering the height of the building and the roof structure and by relocating the bay window and roof structure away from the dwellings abutting the Property to the south.

Votes on Motions:

VOTE: 3-0-2: Board Motion to DENY Applicant's Motion to Strike Party Opponent's Exhibit 42 post-hearing document. (Ruthanne G. Miller, John A. Mann II, and Curtis L. Etherly, Jr. to Deny; Geoffrey H. Griffis and Kevin L. Hildebrand, not present, not voting).

VOTE: 3-0-2: Board Motion to **GRANT** Applicant's Motion to Allow Applicant to Respond to Opponent's Exhibit 42 (Ruthanne G. Miller, John A. Mann II, and Curtis L. Etherly, Jr. to support; Geoffrey H. Griffs and Kevin L. Hildebrand, not present, not voting).

VOTE: 3-0-2: Board Motion to amend application to provide relief from Section 401.6. (Ruthanne G. Miller, Curtis L. Etherly, and John A. Mann II to support; Geoffrey H. Griffis and Hildebrand, not present, not voting).

It is therefore **ORDERED** that this application be **GRANTED.**

VOTE: 4-1-0: (Ruthanne G. Miller, John A. Mann II, Curtis L. Etherly, Jr., and Geoffrey H. Griffis (by absentee vote) to approve, as amended; Kevin L. Hildebrand (by absentee vote) to oppose.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

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

FINAL DATE OF ORDER: SEP 09 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.

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.SG/RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 17154

As Director of the Office of Zoning, I hereby certify and attest that on SEP 0 9 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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