GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17166 of Dinesh Sharma and Murali Nadipelli, pursuant to 11 DCMR § 3103.2, for a variance from the lot area and width requirements under section 401, a variance from the lot occupancy requirements under section 403, and a variance from the floor area ratio requirement under § 1203.3 to allow the construction of a two-unit building in the CAP/R-4 zone district at premises 430 3rd Street, N.E. (Square 755, Lot 835).

HEARING DATE: June 29, 2004 and July 13, 2004
DECISION DATE: September 14, 2004

DECISION AND ORDER

This self-certified application was submitted March 15, 2004 by Dinesh Sharma and Murali Nadipelli ("Applicant"), the owners of the property that is the subject of the application. The application, as subsequently amended, requested area variances from requirements applicable to lot area, lot width, and lot occupancy to allow the construction of a two-unit residential building on a vacant lot in the Capitol Interest (CAP) overlay/R-4 zone at 430 3rd Street, N.E. (Square 755, Lot 835).[1] Based on the testimony of the Office of Planning, the Board found that a variance from floor area ratio ("FAR") requirements under § 1203.3 was also necessary for the Applicant's proposed building.

Following a hearing on June 29 and July 13, 2004 and a public meeting on September 14, 2004, the Board voted 5-0-0 to grant the application with respect to variances from lot width and lot area requirements, and to deny the application with respect to variances from lot occupancy and floor area ratio requirements.

[1] The application originally requested, pursuant to 11 DCMR § 3103.2, a variance from the lot area and width requirements under § 401, a variance from the lot occupancy requirements under § 403, a variance from the rear yard requirements under § 404, a variance from the off-street parking requirements under § 2101.1, and a variance from the use provisions under § 330.5 to allow the construction of a four-unit apartment building at the subject property.

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PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. By memoranda dated March 16, 2004, the Office of Zoning provided notice of the application to the Office of Planning, the District Department of Transportation, the Councilmember for Ward 6, Advisory Neighborhood Commission ("ANC") 6C, and Single Member District/ANC 6C08. Pursuant to 11 DCMR § 3113.13, on March 19, 2004 the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Applicant, the Councilmember for Ward 6, Single Member District/ANC 6C08, and owners of property within 200 feet of the subject property. Notice was also published in the D.C. Register on March 26, 2004 (51 DCR 3265).

Party Status. In addition to the Applicant, ANC 6C was automatically a party in this proceeding. There were no additional requests for party status.

Applicant's Case. The Applicant presented evidence and testimony describing plans to construct a two-unit residential building on the subject property, and indicated that the requested variances were necessary because the property could not otherwise be developed. According to the Applicant, the subject property was unique due to its small, narrow size, and practical difficulties would arise with respect to the economic feasibility of constructing a new building consistent with zoning requirements.

Government Reports. By memorandum dated June 1, 2004, the Office of Planning ("OP") recommended denial of the original application. According to OP, the Applicant's proposal would also require variance relief from height, area, and bulk requirements applicant in the CAP overlay district under § 1203.3.

By supplemental report dated June 22, 2004 addressing the amended application, the Office of Planning recommended approval of the requested variance relief from lot width and lot area requirements, but denial of the requested variance from the maximum lot occupancy so as to permit a lot occupancy of 75 percent. OP again noted that the Applicant's proposal required a variance under § 1203.3 to increase the floor area ratio from 1.8 to 2.25, and recommended denial of the FAR variance.

ANC Report. By letter dated May 19, 2004, Advisory Neighborhood Commission 6C indicated that, at a regular monthly meeting on May 12, 2004 with a quorum present, the ANC passed a motion in opposition to the use, lot occupancy, and parking variances requested by the Applicant. The ANC's opposition was based on "the unsubstantiated economic hardship claims for the use variance; the negative impact of scarce parking in this location; and the impact on adjacent properties of higher lot occupancy." ANC 6C supported the request for variances from minimum

lot area and lot width requirements "in the event that the granting of these 2 variances would result in the construction of only a two-unit, two-story apartment building."

Persons in Opposition to the Application. The Board received four letters in opposition to the original application from residents and owners of property in the 400 block of 3rd Street, N.E., citing a shortage of on-street parking and asserting that construction of a four-unit apartment building at the subject property would be "ill-advised" and would adversely affect the light, air, and privacy of nearby residences. The Capitol Hill Restoration Society submitted a letter indicating its support for "only those area variances needed for matter-of-right use of this lot as a single-family residence or flats" and its opposition to the requested variance from the maximum lot occupancy requirement, citing the lack of practical difficulty arising from compliance with the requirement and the absence of information about the impact on neighboring properties of the Applicant's plan to increase the length of the proposed building by 15 feet. The Stanton Park Neighborhood Association also submitted a letter opposing the requested use, lot occupancy, and parking variances, but supporting variance relief from "requirements for minimum lot width and lot area, in that it is necessary for the construction of a 1- or 2-family dwelling."

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 430 3rd Street, N.E., on the west side of 3rd Street between E Street and Massachusetts Avenue (Square 755, Lot 835).

2. The subject property is a narrow, rectangular lot bounded by 3rd Street on the east, a public alley on the west, and multifamily buildings on the north and south. The alley is 25 feet wide and dead-ends into the rear of the subject property.

3. The subject property is currently unimproved, but previously contained a one-story row dwelling of approximately 605 square feet that was demolished in December 2002.

4. Properties in the vicinity of the subject property provide a mixture of residential, office, and retail uses. The office and retail uses are located primarily along Massachusetts Avenue, while nearby residential buildings include two-story row dwellings and small apartment buildings. The subject property and nearby parcels are zoned CAP/R-4. Other properties in the same square – those fronting on Massachusetts Avenue and 2nd Street are zoned

CAP/C-2-A. The subject property and vicinity are located within the Capitol Hill historic district.

Applicant's Project

5. The Applicant proposed to build a new building that would contain two dwelling units. The three-story with cellar building would extend approximately 78 feet. One parking space would be located at the rear of the property, accessible from the public alley.

Requested Variances

6. Zoning requirements for a row dwelling or flat in the R-4 zone include a minimum lot width of 18 feet and a minimum lot area of 1,800 square feet. 11 DCMR § 401.3. The subject property is 14 feet wide and 98 feet long, and has an area of 1,372 square feet.

7. The subject property was created by a subdivision that predates the Zoning Regulations. Because neighboring properties are improved and are under separate ownership, the subject property cannot be combined with another lot to achieve the required minimum lot width and area.

8. Row dwelling and flats are uses permitted as a matter of right in the R-4 zone. Use of the subject property for a row dwelling or flat would require the smallest variance from the area and width requirements applicable in the R-4 zone, which are larger for other permitted uses.

9. The Board finds the nonconforming width and lot area of the subject property constitute an extraordinary or exceptional situation or condition of the subject property such that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant as owner of the subject property, because no matter-of-right use could be constructed at the subject property without variance relief from lot width and area requirements.

10. The maximum lot occupancy permitted in the R-4 zone is 60 percent for a row dwelling or flat (and 40 percent for most other structures). 11 DCMR § 403.2. The Applicant requested variance relief to permit a lot occupancy of 75 percent.

11. The Applicant did not indicate the extraordinary or exceptional situation or condition of the subject property such that the strict application of the relevant lot occupancy requirement would result in peculiar and exceptional practical difficulties to the Applicant as owner of the subject property.

12. The maximum permitted FAR on the subject property is 1.8. 11 DCMR § 1203.3. The Applicant's proposed three-story building with a lot occupancy of 75 percent would result in a FAR of 2.25.

13. The Applicant did not indicate the extraordinary or exceptional situation or condition of the subject property such that the strict application of the maximum FAR requirement would result in peculiar and exceptional practical difficulties to the Applicant as owner of the subject property.

Harmony with Zone Plan

14. The subject property is located within the Capitol Interest overlay district and is zoned CAP/R-4. The R-4 district is "designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) or more families." 11 DCMR § 330.1. The R-4 district is not intended to "be an apartment house district as contemplated under the General Residence (R-5) Districts." 11 DCMR § 330.3.

15. The Capitol Interest (CAP) overlay district was established "to promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the area adjacent to this jurisdiction...." 11 DCMR § 1200.1.

16. The Board concurs with the testimony of the Office of Planning that the requested variances pertaining to minimum lot width and area can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. Variances from lot width and lot area requirements are necessary to allow construction of a row dwelling or flat, uses that are permitted as a matter of right on the subject property.

CONCLUSIONS OF LAW

The Applicant seeks variance relief from the lot area and lot width requirements under § 401, the lot occupancy requirements under § 403, and the floor area ratio requirements under § 1203.3 to allow the construction of a two-unit building in the Capitol Interest (CAP) overlay/R-4 zone at 430 3rd Street, N.E. (Square 755, Lot 835). The Board is authorized to grant a variance from the strict application of the zoning regulations 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, provided that relief can be granted 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.

Based on the above findings of fact, and having given great weight to the Office of Planning and to the issues and concerns of the affected ANC, the Board concludes that the Applicant has satisfied the burden of proof with respect to the requested variances from lot area and lot width requirements under § 401, but not with respect to the requested variances from the lot occupancy requirement under § 403 or the floor area ratio requirement under § 1203.3. Accordingly, it is therefore **ORDERED** that the application is **GRANTED** in part and **DENIED** in part.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and Kevin Hildebrand to grant variances relating to lot width and lot area but to deny variances relating to lot occupancy and to floor area ratio).

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: JUL 11 2006

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.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 of the D.C. CODE. SEE D.C. CODE § 1-2531 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.