CAPITOL HILL RESTORATION SOCIETY
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June 21, 2004

Jerrily R. Kress, FAIA
Director, Office of Zoning
Suite 210
441 4th Street, NW
Washington, DC 20001

RE: BZA# 17188

Dear Director Kress,

The Capitol Hill Restoration Society Zoning Committee at a meeting held on June 10, 2004, considered the above case. For the reasons noted below, the Committee voted unanimously to oppose the multiple variances for the construction of a garage.

The property is a 16.54'x80' rectangular lot bounded on the west side by Third Street NE; on the north and south by identical lots occupied by similar single-family dwellings; and on the east by a 15' public alley. The zoning for the immediate area is CAP/R-4. All of the properties on the east side of the 400 block of Third Street NE are similar in dimension, with row dwellings of similar character. At present, none of them has a garage. The property's current lot occupancy, when including the open court that is less than 5 feet wide, (64.8%) exceeds the 60% restriction for a single-family dwelling in an R-4 zone. Adding the proposed garage would increase lot occupancy to approximately 89%.

The criteria for granting a variance are set forth in D.C. Code § 6-641.07(g)(3) and 11 DCMR § 3103.2. As interpreted by the D.C. Court of Appeals, the law requires that an application meet three conditions before a variance may be granted: 1. uniqueness of the property, 2. resultant difficulties or hardship from a strict application of the zoning regulations, and 3. no substantial detriment to the public good nor to the purposes of the District's zone plan. See Capitol Hill Restoration Society v. D.C. Bd. of Zoning Adjustment, 398 A.2d 13, 15-16 (D.C. Ct. App. 1979). In CHRS's view, the application fails to meet the relevant legal standards in its request for the lot occupancy and alley offset variances, and should therefore be denied.

The applicant fails to make any showing that the property suffers from exceptional narrowness, shape, topography, or "other extraordinary or exceptional situation or condition." 11 DCMR § 3103.2. Indeed, it is clear that the property is a typical Capitol Hill lot occupied by a typical rowhouse, functionally indistinguishable from any of the neighboring Third Street properties on essentially identical lots. In such circumstances, a variance is inappropriate. See Capitol Hill Restoration Society, 398

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A.2d at 16 (striking down variance granted with respect to rowhouse "in a series of row houses which are of nearly identical design and size").

As the D.C. Court of Appeals has held,

> The threshold requirement to show that the property is unique with respect to the hardship or difficulty asserted as grounds for the variance means the property owner must present proof that "the circumstances which create the hardship uniquely affect the petitioner's property...." Taylor [v. D.C. Bd. of Zoning Adjustment], 308 A.2d at 234 (emphasis in original). Where the circumstances which create the hardship or difficulty affect the entire neighborhood rather than merely a specific piece of property, the problem is properly addressed by seeking amendment of the regulations from the Zoning Commission. Id.

Capitol Hill Restoration Society v. D.C. Bd. of Zoning Adjustment, 534 A.2d 939, 941-42 (D.C. Ct. App. 1987); accord Myrick v. D.C. Bd. of Zoning Adjustment, 577 A.2d 757, 760 (D.C. Ct. App.); Palmer v. Bd. of Zoning Adjustment, 287 A.2d 535, 539 (D.C. Ct. App. 1972).

The applicant asserts that granting a variance "will make the property uniform with those properties with garages." Application p. 2. This argument overlooks two critical facts. First, there is no evidence that the nearby garages (i.e., those on properties facing D St.) are nonconforming. Indeed, a review of the surveyor's records reveals that the D St. lots with garages are substantially larger than the applicant's property, ranging in area from 1820sf (304 D St. NE) to 2335sf (320 D St. NE). Second, the existence of these grandfathered garages cannot justify the requested variance even if they are nonconforming. Otherwise, a single nonconforming garage on a block would be a basis for granting each and every other nearby homeowner a variance, thereby obliterating the purpose and effect of the zoning regulations. This is of utmost concern in the Capitol Hill Historic District, where nonconformity (in lot width, lot occupancy, etc.) is prevalent among the historic homes constructed prior to the creation of the Zoning Regulations.

The Court of Appeals has stated emphatically that such "slippery slope" variances should not be granted:

> The granting of a variance where the circumstances do not uniquely affect the petitioner's property could lead to similar requests by other property owners, which, as a matter of due process, would have to be granted. Approval of such requests would be tantamount to an amendment of the zoning map or regulations....

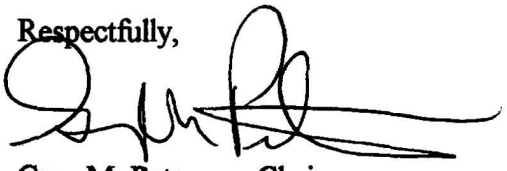
Palmer, 287 A.2d at 539; accord Myrick, 577 A.2d at 760; Capitol Hill Restoration Society, 534 A.2d at 942; Capitol Hill Restoration Society, 398 A.2d at 16; Taylor v. D.C. Bd. of Zoning Adjustment, 308 A.2d 230, 234 (D.C. Ct. App. 1973).

The present application illustrates this danger, as the applicant states that "[a] number of the adjacent neighbors have expressed desire to erect a garage also." See Application p. 2. If the Board grants the current applicant's request, it will then have to choose between granting lot occupancy variances to these other neighbors (which would "substantially impair the intent, purpose, and integrity of the zone plan," 11 DCMR § 3103.2) and arbitrarily denying variances for properties essentially identical to the subject.

The applicant also fails to identify the "peculiar and exceptional practical difficulties" imposed by a strict application of the zoning regulations. Neither the applicant's desire to "improve the appearance of the property" (p. 3) nor the applicant's purported "security needs" (p. 2) satisfies this element of the legal standard for a variance.

For all of these reasons, CHRS respectfully urges the Board to deny the requested lot occupancy variance, as well as the variances from the other regulations.

Respectfully,



Gary M. Peterson, Chair
Capitol Hill Restoration Society
Zoning Committee

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