GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17188 of Deborah Miles, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirement under section 403, and a variance from the alley set-back requirement under subsection 2300.2(b), to construct an accessory garage serving a single-family row dwelling in the CAP/R-4 District at premises 409 Third Street, N.E. (Square 780, Lot 26).

HEARING DATE: July 13, 2004
DECISION DATE: September 9, 2004

DECISION AND ORDER

This application was submitted February 24, 2004 by Deborah Miles, also known as Deborah Miles Dominique ("Applicant"), the owner of the property that is the subject of this application ("subject property"). In a letter dated November 3, 2003, the Applicant had been advised by the Chief of the Zoning Review Branch of the D.C. Department of Consumer and Regulatory Affairs ("DCRA") that she needed to appear before the Board of Zoning Adjustment ("Board " or "BZA") for variance relief. DCRA advised the Applicant that she needed relief from 5 provisions of the Zoning Regulations in order to carry out her plans of constructing an addition to her dwelling and a garage in its rear yard.

Between her receipt of the letter from DCRA citing the necessary relief and her filing of this application with the Board, the Applicant revised her plans and decided not to construct an addition to her dwelling. Therefore, the amount of relief requested was reduced and applied only to the construction of the garage. This change was memorialized in a May 4, 2004 memorandum to the Board from the staff of the Office of Zoning ("OZ").

The Board held a public hearing on the application on July 13, 2004. After the hearing, the record was left open to receive further information from the Applicant and the D.C. Office of Planning ("OP"). This information was submitted, and the Board, at a September 9, 2004 decision meeting, decided to deny the application by a vote of 4-0-1.

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. By memorandum dated May 4, 2004, the Office of Zoning sent notice of the filing of the application to the District Department of Transportation ("DDOT"), OP, the Councilmember for Ward 6, Advisory Neighborhood

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Commission ("ANC") 6C, and the Single Member District ANC member for ANC 6A08. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register* and mailed letters to the Applicant, ANC 6C, and all owners of property within 200 feet of the subject property notifying them of the hearing date.

Requests for Party Status. There were no requests for party status in this case.

Applicant's Case. Due to illness, the Applicant herself could not attend the hearing, but her husband and her architect put on her case before the Board. The architect, Ms. Patrick, noted that the Applicant needed 3 variances – a variance from the maximum lot occupancy allowed by § 403, a variance from the requirement of § 2300.2(b) that an accessory building be set back at least 12 feet from the centerline of an adjacent alley, and a variance from § 404 to permit a rear yard of less than 20 feet in length. She explained that the lot is unique because it abuts a large private parking lot at the rear and the Applicant has security concerns arising out of the use of this parking lot. She also stated that the lot is too small to be able to add a garage while staying within the parameters of the Zoning Regulations.

Government Reports. By report dated July 6, 2004, OP recommended denial of the variance relief requested. OP opined that the Applicant required variances from 3 provisions of the Zoning Regulations – a variance from the maximum lot occupancy, a variance from the alley setback requirement, and a variance from the 30% maximum rear yard coverage for accessory buildings set forth in § 2500.3. The OP report stated that the presence of an internal commercial parking lot in the center of the Square was a unique circumstance, but that there was no exceptional condition of the subject property for purposes of granting a variance. The OP report also stated that granting the variances would be contrary to the intent of the Zoning Regulations and Map. In its report, OP quoted an e-mail communication from DDOT expressing concern about the ability of large vehicles, such as trash trucks, to maneuver in the alley, and asking if the Applicant's proposed garage could be set back 2 to 3 feet from the edge of the alley. There was, however, no separate report filed by DDOT.

At the hearing, OP stated that it had also received e-mail comments from the Fire Department which stated that the Department had no concerns with the Applicant's proposal, provided all fire codes were complied with.

OP filed a Supplemental Report dated July 20, 2004 explaining its review of a series of old and current maps which included the subject property. OP continued to conclude that, even if in the past there had been a structure in the subject property's rear yard, rebuilding such a nonconforming structure would be contrary to the intent of the Zoning Regulations and Map and that, therefore, the application still failed to meet the variance test.

ANC Report. By letter dated June 21, 2004, the chairman of ANC 6A indicated that at a properly noticed meeting on June 9, 2004, ANC 6C voted 5-2 (with 5 members constituting a quorum) to support the application.

Persons in Opposition. By letter dated June 21, 2004, the Capitol Hill Restoration Society informed the Board that it had considered the application at a meeting held on June 10, 2004, and had voted unanimously to oppose it. The Stanton Park Neighborhood Association, by letter dated July 12, 2004, also wrote to oppose the application.

FINDINGS OF FACT

1. The subject property is located in an R-4 zone district, in Square 780, Lot 26, at address 409 Third Street, N.E. It is one of a series of 13 lots fronting on Third Street within Square 780, each of which is improved with a row dwelling.

2. Square 780 is bounded by Third Street, N.E. to the west, Fourth Street, N.E. to the east, D Street, N.E. to the south, and E Street, N.E. to the north.

3. The subject property is a non-conforming lot, 16.5 feet wide and 80 feet deep, and is developed with a single-family row dwelling constructed prior to the enactment of the Zoning Regulations in 1958.
4. The subject property is a level, regularly-shaped, rectangular lot.

5. At its rear, the subject property abuts the west side of a 15-foot wide alley. Parking for the row dwelling is provided in the rear yard on a concrete pad accommodating two cars and accessed from the alley.

6. The Applicant proposes to construct a new 10-foot high detached garage over the location of the existing concrete parking pad.

7. The row dwelling has a lot occupancy of 65% and construction of the proposed garage would increase the lot occupancy to approximately 89%.

8. The proposed garage would cover 96.7% of the required rear yard space and would reduce the rear yard from the required depth of 20 feet to 14 feet.

9. The proposed garage would be located at the rear lot line and would not be set back from the alley at all.

10. Abutting the alley on its east side, and therefore behind the Applicant's row dwelling and the dwellings adjacent to it, is a large, square, open paved area used as a private (pay for use) parking area.

11. The private parking area occupies the center of the Square and is internal, with no street frontage. It is surrounded by alleys on all 4 sides, which form its perimeter. The rear lot lines of most of the lots in the Square abut these alleys.

12. The internal parking area is accessed by alleys perpendicular to its perimeter alleys. Two of these perpendicular alleys lead from Third Street, N.E., one from Fourth Street, N.E., and one from E Street, N.E.

13. At least 12, and possibly all, of the 13 lots facing Third Street, of which the subject property is one, appear to have the same 80 foot lot length and 16.5 foot lot width as the subject property. The lots within Square 780, but on the opposite side of the central parking area and fronting onto Fourth Street, are of a similar size.

14. At various times in the past, and as late as 1991, the subject property had an accessory structure in its rear, presumably a garage, a portion of one wall of which still remains. However, in 1991, it appears that 7 other lots of the 13 lots facing Third Street also had rear accessory structures, most of which appear to have been razed by 2002.

15. Of the similarly-sized and situated Square 780 lots fronting on Fourth Street, it appears that 9 lots had, in 1991, rear accessory structures, most of which appear to have been razed by 2002.

CONCLUSIONS OF LAW

The Board is authorized to grant variances 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 topographic 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 only 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." *Id.* The Applicant is applying for area variances and so must make the lesser showing of "practical difficulties," and not the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment,* 287 A.2d 535, 541 (D.C. 1972). Therefore, in order to be granted any variance, let alone 3 or 4 variances, the Applicant must show an exceptional condition or "uniqueness" of the property, practical difficulties in

complying with the Zoning Regulations arising out of this uniqueness, and no detriment to the public good or impairment of the zone plan.

The Board concludes that the Applicant failed to show any exceptional situation or condition of the subject property to support the granting of variance relief. The property is a regularly-shaped, level, rectangular parcel. It has no distinguishing topographic features, has street and alley access, and provides parking for two vehicles. It is true that the Applicant's lot is nonconforming as to lot area and width and her structure as to lot occupancy, but there are other such nonconforming structures and lots in the neighborhood. Ownership of a nonconforming structure on a nonconforming lot cannot constitute the necessary uniqueness for variance purposes. Such nonconformities, rather than being unique to any particular structure or lot, are features common to many properties within the District.

The Applicant also claims that the existence of the internal commercial parking lot in the center of the Square, onto the perimeter alley of which her property abuts, makes her property unique. The internal parking lot, however, takes up the entire central portion of the Square. It is therefore similarly abutted by approximately 41 other lots, all of which would be similarly impacted by its existence. The Board concludes that even if the presence of this internal parking lot makes Square 780 unusual, it does not constitute an exceptional condition or situation of the subject property.

The Applicant stresses that she needs to construct the proposed garage for security reasons because of the use of the parking lot by various persons, but these security concerns would presumably be shared by the owners of the other 41 lots, and potentially by all the property owners in the Square. Granting variances to the Applicant could result in similar demands from other property owners in the Square, approval of which would "in effect be amending the Zoning Regulations," something which the Board is powerless to do. *See, Palmer* at 539.

The Board is sympathetic to the Applicant's desire to re-construct a rear garage for security reasons. Notwithstanding its understanding of the Applicant's situation, however, the Board must make its decision based on the application of the Zoning Regulations, specifically the 3 prongs of the variance test. Having found no extraordinary or exceptional condition of the subject property, and that therefore, the application does not meet the first prong of the test, the Board need not address the second and third prongs.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. ANC 6C supported the application, but did not address the

uniqueness requirement, except to point out that many other neighborhood properties share some of the nonconformities suffered by the subject property. This, in the Board's view, argues against granting of the application. OP did not support the granting of the variances and the Board agrees with its recommendation that the application be denied for failure to meet the variance test.

For the reasons stated above, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the application for a variance from the lot occupancy requirement under § 403, and a variance from the alley set-back requirement under subsection 2300.2(b), to construct an accessory garage serving a single-family row dwelling.[1] Accordingly, it is therefore **ORDERED** that the application is **DENIED.**

VOTE: **4-0-1** (Geoffrey H. Griffis, John A. Mann, II, Ruthanne G. Miller, and Curtis L. Etherly, to deny the application. No Zoning Commission Member participated in the case.)

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: DEC 2 1 2004

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

[1]These were the two variances that were advertised. The Board has concluded that the first prong of the variance test was not met and no variances can be granted. Therefore, the question of whether variances from the § 404 rear yard requirement and the § 2500.3 rear yard coverage requirement should also have been requested or advertised is moot.

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BZA APPLICATION NO. 17188

As Director of the Office of Zoning, I hereby certify and attest that on DEC 2 1 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 R. KRESS, FAIA
Director, Office of Zoning