GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17241 of Thomas and Dana McLarty III, pursuant to11 DCMR § 3103.2, for a variance from the maximum height and number of stories requirements under § 404, a variance from the side yard requirements under § 405, and a variance from the nonconforming structure provisions under § 2001.3, to allow a rear addition to a single-family dwelling in the R-1-B zone at premises 1824 24th Street, N.W. (Square 2506, Lot 45).

HEARING DATE: November 23, 2004
DECISION DATE: November 23, 2004 (Bench Decision)

DECISION AND ORDER

Thomas and Dana McClarty, the owner of the subject premises (the owner or the applicant), filed this application for variance relief with the Board of Zoning Adjustment (the Board) on July 18, 2004. For the reasons stated below, the Board finds that the applicant failed to meet the elements for a variance. The application is therefore denied.

Notice of Public Hearing The Board scheduled a public hearing for November 23, 2004. Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, owners of all property within 200 feet of the subject premises, the Advisory Neighborhood Commission (ANC) 2D, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property[1] regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 27).

Self-Certification The zoning relief requested was self-certified, pursuant to 11 DCMR § 3113.2 (Exhibit 2).

Applicant's Case The Applicant is seeking to construct a fourth floor above a portion of the existing third floor. The new addition would be used as a study. Gladys Hicks, zoning consultant, presented the case with testimony from applicant's architect. Applicant seeks a variance to provide more work space in the home.

OP Report OP reviewed the variance application and prepared a written report recommending that the Board deny the variance relief (Exhibit 28). OP found that there was no unique condition of the property which necessitated the variance, nor any

[1] The property was not posted for the 15 days required under 11 DCMR 3113.14. However, the Board waived this requirement upon finding that actual notice had been provided.

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practical difficulty which would result from denial of the variance. While OP found that granting the variance would have no significant impact on the public good, it also concluded that granting the variance would impair the intent of the zone plan.

ANC Report In its report dated November 11, 2004, ANC 2D indicated that it voted to support the variance relief requested (Exhibit 26). The report did not indicate that proper notice was given, what the exact vote was, or whether a quorum was present. Nor did it identify any specific issues or concerns that relate to the standards within the Zoning Regulations.

Request for Party Status The Board received a request for party status (Exhibit 25) from neighboring property owner, Murray Drabkin, whose request was granted over the objection of the applicant. Mr. Drabkin maintained that allowing the proposed addition would destroy the unity of a row of historic townhouses and obstruct the skyline.

Persons in Support of the Application. The Board received letters in support from other nearby property owners.

FINDINGS OF FACT

The Property

1. The subject property is located at 1824 24th Street, NW in the R-1-B zone. It is improved with a four story single-family semi-detached townhouse that was built prior to May 12, 1958, the effective date of the Zoning Regulations.

2. The dwelling is part of a row of town homes that share roof heights with others in a row.

3. Nearly every building on the street frontage of the subject property is of similar bulk and height with a four-story front half and a three-story rear half.

4. The immediate area consists mainly of three and four story single-family and diplomatic uses. Many of the buildings in the area are "overbuilt" for the R-1-B zone that was applied after construction.

The Requested Relief

5. The applicant proposes to construct a one story addition to the rear of the dwelling by extending the fourth story by approximately 350 square feet. The addition would be built on the back of the house over the existing three-story portion. The applicant also proposes a 74 square foot deck over the remainder of the third story.

6. The maximum height allowed under the Zoning Regulations is three stories and forty feet. Although a portion of the existing dwelling is four stories and more than forty-four feet in height, the proposed addition and deck would extend this non-conformity.
7. The minimum side yard requirement under the Zoning Regulations is 8 feet. Although the existing dwelling has no side yard setback on the north or south walls, the proposed addition and deck would also extend this non-conformity.

CONCLUSIONS OF LAW

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. The applicant here seeks relief from these requirements.

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).

The applicant has failed to establish that it has met the three-prong test for a variance

1. Uniqueness The applicant has not demonstrated that there are any conditions that are unique to the property that necessitate the variance. The applicant alleges that the property is unique because: (1) it is a semi-detached dwelling in what is now a detached dwelling zone, and (2) it is four stories tall in a zone that has a three story maximum. However, neither of these characteristics is unique to this property. As stated in the Findings of Fact, the subject dwelling is one of a row of semi-detached townhomes, and many of the dwellings along the street are overbuilt with four stories in front and three stories in the rear.

The applicant argues that all of the buildings in the area are unique because they are all overbuilt. By definition, applicant's building cannot be unique if it is like all of the buildings in the area.. A finding of uniqueness is justified where the extraordinary or exceptional condition uniquely affects a piece of property. *See, Capitol Hill Restoration Society v. BZA,* 534 A.2d 939 (1987). Moreover, the fact that this property is overbuilt can only be characterized as a benefit of the property, not a unique feature that necessitates a variance. While the applicant's desire to expand and avoid "waste" is understandable, it is not a legal basis for granting a variance.

2. Practical Difficulty. 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. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment supra* at 1170. While the applicant demonstrated a practical difficulty in conducting its work in the home due to insufficient space, that practical difficulty is not unique to the particular property. Insufficient space for a property owner's needs could apply to any property.

Further, the practical difficulty must arise from the uniqueness or exceptional condition of the property. D.C. Official Code § 6-641.07(g)(3) (2001) states in relevant part,

> Where by reason of ... extraordinary or exceptional situation or condition of a specific property, the strict application of any regulation..... would result in peculiar and exceptional practical difficulties to or undue hardship upon the owner of the property.....

Accordingly, applicant cannot meet the second prong of the variance test having failed to meet the first prong.

3. Substantial Detriment. The Board also finds that the Applicant has failed to demonstrate that the addition would not result in substantial detriment to the public good or the zone plan. The Board agrees with Mr. Drabkin that the proposed addition would alter the roof line on the street and destroy the unity of the row of townhomes. The Board also agrees with the Office of Planning that granting this application would impair the intent and integrity of the zoning regulations because it so clearly fails the variance test, particularly with respect to the uniqueness element..

In reviewing a variance application, the Board is required under D.C. Official Code § 6-623.04 (2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board agrees with OP's recommendation that the variance relief be denied.

The Board is also required under D.C. Official Code § 1-309(d) (2001) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. However, in this case no issues or concerns were articulated. It merely stated that it voted to "support" the application. Moreover, the ANC report did not contain the information which is required in order to receive great weight. The report contained no information regarding proper notice, the numbers voting, whether there was a quorum, etc. *See,* 11 DCMR 3115.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the motion to **DENY** the variance relief is granted.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II, and John G. Parsons voting in favor of the motion to deny).

Vote taken on November 23, 2004

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

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

FINAL DATE OF ORDER: APR - 7 2005

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DEMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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As Director of the Office of Zoning, I hereby certify and attest that on APR - 7 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:

Gladys Hicks, Zoning Consultant
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Thomas & Dana McLarty III
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Murray Drabkin
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Chairperson
Advisory Neighborhood Commission 2D
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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning