GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17262 of ARCH Training Center, pursuant to 11 DCMR § 3103.2, for variances from the lot area and lot width requirements of § 401, the lot occupancy requirements of § 403, the side yard requirements of § 405, and the open court requirements of § 406, to allow the construction of a new single-family dwelling in the R-3 District at premises 1528 W Street, S.E. (Square 5779, Lot 824).

HEARING DATE: January 4, 2005, March 8, 2005
DECISION DATE: March 8, 2005

DECISION AND ORDER

This application was submitted on October 21, 2004 by ARCH ("Action to Rehabilitate Community Housing") Training Center ("Applicant"), the owner of the property which is the subject of this application ("subject property"). The self-certified application requested several area variances needed to allow the construction of a new single-family detached dwelling. Three variances were originally requested – from lot area and lot width requirements, and minimum side yard dimensions. During the progress of the case, two more variance requests, from maximum lot occupancy and minimum open court requirements, were added.

The Board of Zoning Adjustment ("Board" or "BZA") scheduled a public hearing on the application for January 4, 2005, but, at the Applicant's request, the hearing was postponed until March 8, 2005. At the conclusion of the hearing on March 8th, the Board voted 4-0-1 to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated October 25, 2004, the Office of Zoning ("OZ") gave notice of the filing of the application to the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 8A, the ANC within which the subject property is located, Single Member District/ANC 8-A03, and the Council Member for Ward 8. Pursuant to 11 DCMR § 3113.13, OZ published notice of the public hearing in the *District of Columbia Register* and on October 28, 2004, sent such notice to the Applicant, all property owners within 200 feet of the subject property, and ANC 8A.

On February 9, 2005, the Applicant supplemented its application to request variance relief from the applicable lot occupancy provisions. At that time, the Applicant notified

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OP, ANC 8A, and all property owners within 200 feet of the subject property, of the supplemental relief requested.

The Applicant posted the property more than 15 days prior to the March 8th hearing, informing the public of the pending application and hearing date, and filed a notarized Affidavit of Posting verifying that the property was posted in a timely manner.

Requests for Party Status. ANC 8A was automatically a party to this proceeding. There were no other requests for party status.

Government Reports. The Office of Planning filed a report dated March 1, 2005. The report supported the variances from lot area and lot width, but recommended denial of the variances from lot occupancy, side yard and open court requirements. OP based its recommended denial of the three variances on its belief that the need for the variances is due only to the voluntary provision of a side porch on the eastern side of the dwelling. OP also expressed concerns that part of the western side yard provided is too narrow to allow for proper maintenance of the dwelling.

There were no other government reports filed in this case.

ANC Report. The ANC submitted a letter dated February 27, 2005, stating that, during a January 4, 2005 meeting, the ANC voted unanimously to oppose the application. The letter reflects concerns regarding the design of the dwelling and its proposed method of sale.

Persons in support. The ANC representative from the Single Member District in which the subject property is located disagreed with the ANC as a whole and testified in favor of the application.

FINDINGS OF FACT

1. The subject property is a partially vacant lot located at the northwest corner of W and 16th Streets, S.E., at address 1528 W Street, S.E. (Square 5770, Lot 824). It is in an R-3 zone district and within the Anacostia Historic District.

2. There was a single-family detached dwelling on the subject property built in 1905, but later razed. Currently, there is only a detached garage at the rear of the lot.

3. The lot of the subject property pre-dates the Zoning Regulations and is 115 feet long and 24 feet wide, with a lot area of 2,760 square feet. Its front faces W Street, and its rear abuts a 15-foot wide public alley.

4. The minimum lot width required in an R-3 zone is 40 feet and the minimum lot area required is 4,000 square feet. 11 DCMR § 401. The subject property is therefore nonconforming as to both.

5. The subject property is contiguous to only one other lot, which is developed with a detached single-family dwelling. On all three other sides, the subject lot abuts a street or alley.

6. No construction on the subject lot could be undertaken without zoning relief as to lot area and lot width.

7. To the north and west of the subject property are single-family detached dwellings, while to the south, across W Street, is the partial shell of an apartment building. To the east, across 16th Street, are row dwellings.

8. The Applicant plans to employ at-risk youth to construct a new single-family dwelling on the property. Through a program called YouthBuild, the Applicant will provide these youth with construction and related career opportunities, as well as educational enhancement and guidance/career counseling, while providing economic development and a new residential unit for the community.

9. The proposed dwelling will be two-stories and 28.5-feet high and will be similar in size to the dwelling which originally existed on the property.

10. The Applicant cannot construct a row dwelling, attached to the dwelling on the contiguous lot to the west, because there is no party wall. The adjacent dwelling to the west has a small side yard between it and the subject property.

11. The currently-existing garage at the rear of the property will be razed and replaced with two off-street parking spaces accessible from the rear alley.

12. There is some grade change along 16th Street, with the lot sloping upward away from the street toward the eastern wall of the proposed dwelling.

13. The proposed dwelling will have approximately 1,915 square feet of floor area, with a proposed lot occupancy of 50.8%, where only 40% is permitted. 11 DCMR § 403.2. However, the actual footprint of the dwelling occupies slightly less than the maximum-permitted 40% of the lot. Because the western side yard is less than 5 feet in width, it must be included in the calculation of

lot occupancy, resulting in the 50.8% figure. *See,* 11 DCMR § 199.1, definition of "Building area."

14. The proposed dwelling will have a rear yard of 54 feet, 7 inches, a side yard between it and the contiguous lot varying between 2 feet, 10 inches, and 4 feet. The center portion of the proposed dwelling is "bumped out," causing a decreased side yard width in the central part of the yard.

15. The R-3 zone district requires an 8-foot side yard between the subject lot and the contiguous lot. 11 DCMR § 405.1.

16. There will be no side yard on the 16th Street side (east side) of the proposed dwelling, but no side yard is required because the subject property is a corner lot. *See,* 11 DCMR § 405.5.

17. The wraparound front porch and a small side porch on the 16th Street side create a 4-foot wide open court along the eastern side of the proposed dwelling, whereas a minimum court width of 9.5 feet is required. 11 DCMR § 406.1.

18. The proposed dwelling will be 16 feet in width, plus the four-foot extension of the wraparound front porch. If the west side yard were 8 feet, the width of the dwelling would be reduced to only 12 feet, and if both side yards were 8 feet, the width of the dwelling would be reduced to an unusable 8 feet.

19. Changing the siting of the proposed dwelling so as to place the eastern wall along the 16th Street lot line would mean loss of the wraparound front porch, a preferred historic preservation feature. It would also place the eastern wall flush with the sidewalk, only 12 feet from the 16th Street curb. This would be out of character with the nearby dwellings fronting on 16th Street, the walls of which are not immediately abutting the sidewalk, but are set back from it.

20. The wraparound porch corresponds to the corner aspect of the subject lot and ties together the two street frontages.

21. The adjacent detached houses along W Street have the small size and narrow dimensions of row dwellings. Although they are detached, most have only approximately 4 to 5 feet of open space between them. These traits are characteristic of the Anacostia Historic District. The design of the proposed dwelling is compatible with these historic features.

22. To protect the privacy of the dwelling on the contiguous lot to the west, there are only 3 relatively small windows on this side of the proposed dwelling, with

no windows in the "bumped out" central portion of the western wall; light being furnished via 3 skylights in the roof.

CONCLUSIONS OF LAW

The Variances

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 at the time of the original adoption of the regulations 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 particular 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), 11 DCMR § 3103.2. Relief can be granted only "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.* An applicant for an area variance must make the lesser showing of "practical difficulties," as opposed to 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).

The lot of the subject property pre-dates the Zoning Regulations. Its area and width are both less than three-quarters of the minimums required in the R-3 zone district. The lot is unusually narrow for an R-3 district, with no possibility of subdivision and expansion. Accordingly, by definition, the property meets the first prong of the variance test in that it is an exceptionally narrow lot that predates the zoning regulations. It is also exceptional in that its area is too small to build on without zoning relief. The inability to build any dwelling without zoning relief is the practical difficulty that stems directly from the exceptional narrowness and small area of the lot. Thus, the property meets the second prong of the test.

The small size and width of the lot and the attempt to design a historically-compatible dwelling have also led to the request for the other three variances – lot occupancy, side yard and open court. The footprint of the dwelling is within the allowable lot occupancy for the R-3 zone, but because of the narrowness of the lot and the attempt to keep side yards similar to others in this historic district, the side yard and open court must be included in the lot occupancy calculation, increasing it beyond the 40% allowed. The side yard and open court variances are due, to a certain extent, to the wraparound porch and the small side porch proposed for the 16th Street side of the dwelling. The Office of Planning suggested that these variances would be unnecessary if one, or possibly both, of

these amenities were omitted from the design and the eastern wall were sited along the eastern property line. However, the Applicant represented that these amenities made the design of the dwelling more compatible with the historic district, created continuity around the street corner and avoided the door of the dwelling opening directly onto the 16th Street sidewalk.

The Applicant's portrayal of the significance of the porches and the design in general, to historic preservation, is substantiated by the HPRB Staff Report and Recommendation. The Report also notes that, "[this case] is simply a matter of historic building patterns not necessarily meeting current standards." Accordingly, the exceptional narrowness and small area of the lot create the practical difficulty of providing the porches without zoning relief. As stated in the Historic Preservation Report, the porches are a significant element to the historic character of the neighborhood.

The Court of Appeals has stated on several occasions that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." Gilmartin v District of Columbia, 579 A.2d 1164 (D.C.1990), Palmer, supra, 287 A.2d at 542 The Court defers to the Board's determination of the practical difficulties so long as the requisite findings of fact are made . See Gilmartin, supra at 1171 *citing* Wolf v. District of Columbia Bd. of Zoning Adjustment, 397 A.2d 936, 942 (D.C. 1979).

The Board finds that the strict application of the zoning regulations disallowing the porches would result in the practical difficulty to the Applicant of providing a design in accordance with historic preservation standards.

The Board further concludes that all the variances can be granted without impairing the public good or the intent and integrity of the Zone Plan and Regulations. The purposes of a limit on lot occupancy are to prevent over-massing of a building and to ensure sufficient open space around a building to protect the flow of light and air. These purposes are achieved here, even with a greater lot occupancy than permitted as a matter-of-right. The massing of the dwelling is appropriate for its zone district and its lot. The flow of light and air is ensured by the side yard, court, and large open rear yard. Light and air are further enhanced by virtue of the fact that this is a corner lot, open to the street on two sides, with no adjacent dwelling on its eastern side.

The Applicant is constructing a detached single-family dwelling, a matter-of-right use in the R-3 district. The Applicant has designed the dwelling to fit into the character of the neighborhood. This sensitivity to the surrounding neighborhood and its historic nature serves the public good and it is precisely this sensitivity that has caused the need for the variances.

Great Weight

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.

The Office of Planning recommended granting the lot area and lot width variances, but denial of the lot occupancy, side yard and open court variances. The Board agrees with OP concerning the first two variances. As to the latter three variances, the Board acknowledges OP's reasoning that the Applicant may be able to avoid these variances by removing the porches and siting the eastern wall along the lot line. However, the ability to avoid a variance is not the test for an area variance. Rather, the Board must consider the practical difficulty to the owner if the variance is not granted. As stated above, the Board finds that Applicant would suffer a practical difficulty in comporting with historic preservation standards without variance relief. The Board concludes that the Applicant should not be forced to site the wall flush with the sidewalk in order to avoid requesting variances. The small lot size and width, corner location of the lot, and the historic preservation constraints make the Applicant's choice of siting and design justify variance relief.

OP also opined that the small portion of the western side yard which was 2 feet, 10 inches wide was too narrow to allow for proper maintenance of the dwelling. The Board agrees with the Applicant's architect that this narrow portion of the side yard does not preclude maintenance of the yard or the western side of the dwelling, particularly as it is only a small part of the entire side yard.

ANC 8A represents in its letter that the ANC voted unanimously to oppose the application, but it is unclear in the letter whether the voted reflected specific identifiable concerns. Further, there is no discussion in the ANC letter of the variances requested, the variance tests, or how the Applicant did or did not meet those tests. The ANC letter cites concerns regarding "materials and cost, price of sale, ... [and] target buyer," none of which are within the jurisdiction of the Board. The ANC also indicated some opposition to the design of the dwelling. The design presented to the ANC, however, was not the design presented to the Board, but an earlier, more "contemporary" one. The Board has not received any letter from the ANC reflecting a vote on the more historically-compatible design which was before the Board. Therefore, the Board is not persuaded by the ANC's opposition.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the

application for variances from the lot area and lot width requirements of § 405, the lot occupancy requirements of § 403, the side yard requirements of § 405, and the open court requirements of §406. It is therefore **ORDERED** that the application be **GRANTED.**

VOTE: **4-0-1** (Geoffrey H. Griffis, John A. Mann, II, Curtis L. Etherly, Jr., and Ruthanne G. Miller to grant. No Zoning Commissioner present or voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each voting member has approved issuance of this Order granting this application.

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

FINAL DATE OF ORDER: NOV 17 2005

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."

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.

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.

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 NOV 17 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:

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TWR