ROBERT TAYLOR
6 Hall Court
Potomac, MD 20854

REAL ESTATE DEVELOPMENT

Thoron Development LLC, Washington, DC 2000 – Pres.
Owner

• Conduct all aspects of development, management and maintenance for multifamily housing in Washington, DC, including the following:

- **Acquisition**: Site selection; Market research; Feasibility studies; Financial projection analysis; Budget Management
- **Pre-Construction**: Entitlement/Zoning Approval Assistance; Financing approvals; Cost estimating/budgeting; Selection of architects and engineers; Architectural/engineering management; Plan review; Permit expediting; Coordination of general contractor bidding and selection; Contract negotiations/coordination; Project scheduling
- **Construction Management:** Logistic planning and coordination; General contractor management; Quality management; Value engineering; Schedule management; Punch list development; Project close-out
- **Operations Management:** Property management; Maintenance

Current Projects Include
610 Irving Street, NW (24 units)
1360 Kenyon Street, NW
1306 Rhode Island, Ave., NW (4 units)
1237 Shepherd Street, NW (two 4 unit buildings)
1016 Conkling Street, Baltimore MD (new construction of 4 units)

Washington Parkview Apartments LLC, Washington, DC 6/03 – Pres.
Owner/ Landlord

• Own and manage apartment building in northwest Washington, DC.

Taylor Property Development LLC, Washington, DC 11/04 – Pres.
Owner

• Identify, analyze, finance and acquire multifamily property for condominium conversion.
• Manage all aspects of condominium conversion.

Single Family Home Renovations, Greater Metro Washington, DC 2000 – Pres.
Owner

• Identify, analyze, finance and acquire single family homes for renovation and sale
• Lease out and manage single family homes as rental properties
• Direct all activities of business, including hiring contractors, business development, growth and marketing strategy, etc.

BZA
Case No. 17388
Exhibit No. 27

Board of Zoning Adjustment
District of Columbia
CASE NO. 17388
EXHIBIT NO. 27

LAW PRACTICE

Gilbert Heintz & Randolph LLP, Washington, DC — 7/01 – 8/04
Associate

Skadden, Arps, Slate, Meagher & Flom LLP, Washington, DC — 6/97 – 7/00
Law Clerk & Associate

Queen's Crown Court, Cumbria County, England, UK — 1994
Judicial Clerk

Cartmell Shepherd, Solicitors, Carlisle, England, UK — Summer 1994
Law Clerk

EDUCATION

Georgetown University Law Center, Washington, DC — 1995 - 1998
Juris Doctorate

- **Real Estate Transactions** - Studied advanced property law, real estate transactions and contract negotiations.
- **Editor-in-Chief** - *Georgetown Journal of Legal Ethics.*
- **Law Fellow** - Taught advanced classes in legal research and writing.

Harvard College, Cambridge, MA — 1990-1994
A.B., *cum laude*, in English and American Literature and Language.

- **Awarded Two Ford Foundation Grants**
- **Awarded Mellon Foundation Grant**
- **Awarded Harvard Fly Club Fellowship**

MEMBERSHIPS AND COMMUNITY SERVICE

Landlord Advisory Committee for the District of Columbia Housing Authority; Association of African-American Real Estate Professionals (AAREP); Bar Association of the District of Columbia; Bar Association of the U.S. Court of Appeals for the District of Columbia; Harvard Club of Washington DC (also on Harvard Club Schools Committee); Headmaster Search Committee for National Presbyterian School.

Kenyon Terrace - Economic Feasability Analysis

10/31/2005 8:55

	# 1 - Pessimistic		# 2 - Realistic		# 3 - Optimistic	
	As Is	W Addition	As Is	W Addition	As Is	W Addition
Assumptions						
GSF	5,118	6,510	5,118	6,510	5,118	6,510
Construction Cost / GSF	$ 140	$ 140	$ 140	$ 140	$ 140	$ 140
Salable Square Footage	3,590	4,739	3,590	4,739	3,590	4,739
Sales Price / Square Foot	**$ 500**	**$ 500**	**$ 525**	**$ 525**	**$ 550**	**$ 550**
Revenue						
Sales	$ 1,795,000	$2,369,500	$ 1,884,750	$2,487,975	$ 1,974,500	$ 2,606,450
Total Revenue	**$ 1,795,000**	**$ 2,369,500**	**$ 1,884,750**	**$ 2,487,975**	**$ 1,974,500**	**$ 2,606,450**
Expenses						
Purchase of Site	$ 1,050,000	$1,050,000	$ 1,050,000	$1,050,000	$ 1,050,000	$ 1,050,000
Construction	$ 716,520	$ 911,400	$ 716,520	$ 911,400	$ 716,520	$ 911,400
Architectural/Engineering	$ 76,000	$ 76,000	$ 76,000	$ 76,000	$ 76,000	$ 76,000
Zoning Variance	$ 27,000	$ 27,000	$ 27,000	$ 27,000	$ 27,000	$ 27,000
Finance/Carrying Costs	$ 78,000	$ 78,000	$ 78,000	$ 78,000	$ 78,000	$ 78,000
Insurance	$ 9,000	$ 9,000	$ 9,000	$ 9,000	$ 9,000	$ 9,000
Sales Commission/Closing Costs	$ 116,675	$ 154,018	$ 122,509	$ 161,718	$ 128,343	$ 169,419
Total Expenses	**$ 2,073,195**	**$ 2,305,418**	**$ 2,079,029**	**$ 2,313,118**	**$ 2,084,863**	**$ 2,320,819**
Profit / (Loss)	**$ (278,195)**	**$ 64,083**	**$ (194,279)**	**$ 174,857**	**$ (110,363)**	**$ 285,631**

	Property 1	Property 2	Property 3	Property 4
				
	1417 NEWTON ST NW #404	1417 NEWTON ST NW #306	1354 KENYON ST NW #2	1354 KENYON ST NW #3
MLS#:	DC5151956	DC5194685	DC5199067	DC5199077
List/Rent Price:	$289,000	$329,900	$389,000	$409,000
Sold Price:	$314,000	$379,125	$430,000	$444,000
Status:	SOLD	SOLD	SOLD	SOLD
Leg Sub:	COLUMBIA HEIGHTS	COLUMBIA HEIGHTS		
Contract Date:	08-Feb-2005	05-Apr-2005	05-Apr-2005	21-Apr-2005
Settlement Date:	28-Feb-2005	22-Apr-2005	13-Jun-2005	02-Jun-2005
DOMM:	5	9	5	5
Tot Assessed:	$0			
Lot AC/SF:	/	/	/	/
Fin SQFT AG:	614	650	780	780
Unfin SQFT AG:				
Year	1927	1927	1900	1900
Style:	Beaux Arts	Beaux Arts	Victorian	Victorian
Type:	Mid-Rise 5-8 Floors	Mid-Rise 5-8 Floors	Attach/Row Hse	Attach/Row Hse
Exterior:	Brick	Brick	Brick	Brick
Total Beds:	1	1	1	1
Full Baths:	1	1	1	1
Half Baths:		0	1	1
# of Garage Spaces:				
# of Carport				
# of Assigned				
Bsmnt:				
# of Fireplaces:	0	0	0	0
Heat Sys:	Forced Air	Forced Air, Heat Pump(s)	Heat Pump(s)	Heat Pump(s)
Heat Fuel:	Electric	Electric	Electric	Electric
Cool Sys:	Central A/C	Central A/C	Heat Pump(s)	Heat Pump(s)
Cool Fuel:	Electric	Electric	Electric	Electric
Ext Feat:		Fenced - Fully, Sidewalks		
Prop. Cond:	Shows Well	Renov/Remod, Shows Well	Renov/Remod, Shows Well	Renov/Remod, Shows Well
Seller Subsidy:	0.00	0.00	0.00	0.00

$511/ft $583/ft $551/ft $569/ft

Courtesy of: HANS WYDLER
Agent Office: (301) 986-6405

Home: (301) 320-9399
Cell: (301) 523-6313

E-mail: Hans@WydlerBrothers.com
Office: Long & Foster Real Estate, Inc.

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Information is believed to be accurate, but should not be relied upon without verification.
Accuracy of square footage, lot size and other information is not guaranteed.

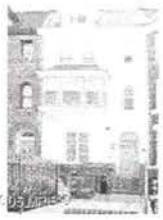
	Property 5	Property 6	Property 7	Property 8
				
	1401 COLUMBIA RD NW #102	3238 13TH ST NW #3	1335 HARVARD ST NW #2	1401 COLUMBIA RD NW #413
MLS#:	DC5241214	DC5309374	DC5175324	DC5187392
List/Rent Price:	$349,000	$349,000	$689,000	$375,000
Sold Price:	$367,000	$350,000	$699,000	$405,000
Status:	SOLD	SOLD	SOLD	SOLD
Leg Sub:	COLUMBIA HEIGHTS	COLUMBIA HEIGHTS	COLUMBIA HEIGHTS	COLUMBIA HEIGHTS
Contract Date:	19-May-2005	19-Jul-2005	27-Apr-2005	26-Mar-2005
Settlement Date:	08-Jul-2005	18-Aug-2005	03-Jun-2005	25-Apr-2005
DOMM:	9	13	45	8
Tot Assessed:	$136,040	$217,550	$142,570	$138,610
Lot AC/SF:	/	/	/	/
Fin SQFT AG:	718	798	1,440	800
Unfin SQFT AG:				
Year	2002	1909	1907	1918
Style:	Beaux Arts	Other	Victorian	Art Deco
Type:	Garden 1-4 Floors	Garden 1-4 Floors	Duplex	Mid-Rise 5-8 Floors
Exterior:	Brick Front	Brick	Brick	Brick
Total Beds:	1	1	2	2
Full Baths:	1	1	2	1
Half Baths:			1	
# of Garage Spaces:				
# of Carport				
# of Assigned				
Bsmnt:				
# of Fireplaces:	0	0	1	0
Heat Sys:	Forced Air	Forced Air	Heat Pump(s)	Heat Pump(s)
Heat Fuel:	Electric	Natural Gas	Natural Gas	Electric
Cool Sys:	Central A/C	Central A/C	Central A/C	Heat Pump(s)
Cool Fuel:	Electric	Electric	Electric	Electric
Ext Feat:				
Prop. Cond:		Renov/Remod, Shows Well	Renov/Remod, Shows Well	
Seller Subsidy:	8,000.00	1,000.00	20,000.00	0.00
	$500/Ft	$437/FT	$472/FT	$506/FT

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	Property 9	Property 10	Property 11	Property 12
				
	1354 KENYON ST NW #1	1320 PARK RD NW #4	1401 1401 COLUMBIA RD NW #30;	3321 HOLMEADE PL NW #4
MLS#:	DC5199043	DC5201025	DC5241005	DC5297438
List/Rent Price:	$425,000	$649,900	$449,000	$495,000
Sold Price:	$425,000	$680,000	$474,000	$485,000
Status:	SOLD	SOLD	SOLD	SOLD
Leg Sub:			COLUMBIA HEIGHTS	
Contract Date:	05-Apr-2005	10-Apr-2005	09-Jun-2005	21-Aug-2005
Settlement Date:	16-May-2005	26-Apr-2005	28-Jun-2005	21-Oct-2005
DOMM:	5	9	6	56
Tot Assessed:			$209,900	
Lot AC/SF:	/	/	/	/
Fin SQFT AG:	890	1,768	912	900
Unfin SQFT AG:				
Year	1900	1905	1913	1900
Style:	Victorian	Federal	Beaux Arts	Other
Type:	Attach/Row Hse	Townhouse	Garden 1-4 Floors	Other
Exterior:	Brick	Brick	Brick	Brick, Vinyl Siding
Total Beds:	2	2	2	2
Full Baths:	1	2	1	2
Half Baths:	1	1	0	0
# of Garage Spaces:				
# of Carport				
# of Assigned				
Bsmnt:				
# of Fireplaces:	0	0	0	0
Heat Sys:	Heat Pump(s)	Forced Air, Heat Pump(s)	Heat Pump(s)	Heat Pump(s)
Heat Fuel:	Electric	Central, Electric	Electric	Electric
Cool Sys:	Heat Pump(s)	Ceiling Fan(s), Central A/C	Central A/C	Central A/C
Cool Fuel:	Electric	Electric	Electric	Electric
Ext Feat:			Balcony	
Prop. Cond:	Renov/Remod, Shows Well	nod, Restored, Shows Well	Renov/Remod, Shows Well	Renov/Remod
Seller Subsidy:	0.00	0.00	0.00	0.00
	$478/FT	N/A THIS IS AN OUTLIER	$520/FT	$539/FT

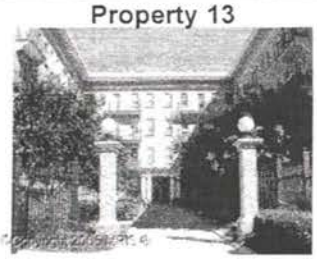
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Property 13



1401 COLUMBIA RD NW #310

MLS#:	DC5374542
List/Rent Price:	$399,000
Sold Price:	$395,000
Status:	SOLD
Leg Sub:	COLUMBIA HEIGHTS
Contract Date:	18-Sep-2005
Settlement Date:	25-Oct-2005
DOMM:	9
Tot Assessed:	$172,900
Lot AC/SF:	/
Fin SQFT AG:	730
Unfin SQFT AG:	
Year	1913
Style:	Beaux Arts
Type:	Garden 1-4 Floors
Exterior:	Brick
Total Beds:	2
Full Baths:	1
Half Baths:	0
# of Garage Spaces:	
# of Carport	
# of Assigned	
Bsmnt:	
# of Fireplaces:	0
Heat Sys:	Heat Pump(s)
Heat Fuel:	Electric
Cool Sys:	Central A/C
Cool Fuel:	Electric
Ext Feat:	Balcony
Prop. Cond:	Shows Well
Seller Subsidy:	0.00

$541/FT

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Hans L. Wydler
Wydler Brothers Real Estate Team
Long & Foster Real Estate, Inc.

Education

Hans has an M.B.A. from Harvard Business School (1993) and a B.A. from Yale University (1988). At Harvard, his electives included courses on strategic finance, entrepreneurial finance, business negotiations and real estate analysis.

Real Estate Investment Analysis Experience

Hans has been investing successfully in Real Estate for almost 12 years, and has invested in more than a dozen projects during that time, including 4 multi-family projects in the District of Columbia.

Hans has also advised numerous clients in connection with the economic viability of residential real estate transactions. He has also worked with several investors to analyze the purchase of real estate in Columbia Heights specifically. Recent examples include:

- Hans is working with a developer to bring 25-30 units to market in Columbia Heights over the next twelve months.
- Hans is currently working with a group of investors looking to purchase a 4-unit apartment building in Columbia Heights.
- Hans managed the conversion (and sale) of a 4-unit apartment building to condominiums on behalf of the owner.

Hans is also a recognized authority on analyzing real estate investments.

- Hans and his brother, Steve Wydler, have authored articles on real estate investment analysis, including an article on negotiating strategy, recently published in *The Washington Post*, entitled, "Bigger Bids Aren't Always Better Bids" (5/14/05).
- Hans was interviewed for an article in *The Wall Street Journal* (4/17/02) discussing the merits of outsourcing the management of a small apartment building versus managing it yourself.
- Hans has given several presentations to fellow Real Estate agents and others on how to evaluate an investment property.

Market Experience

Hans is one of the top selling real estate agents in the Metro area and is a recognized authority on the District's real estate market.

- Hans and his brother Steve sold over $30 million in residential real estate in 2004.
- Hans was his office's overall top producer, listing agent and selling agent in 2004 (out of approximately 100 agents).
- Hans was featured on an episode of "House Hunters" on *Home & Garden TV*, where he helped a newly married couple buy a condominium in Washington, DC.
- Hans has been interviewed on various aspects of the local real estate market for various publications/TV stations including *The Washington Post* and "Nightly Business Report" on *PBS*.

2005 Resume - Ronnie McGhee

925 S Street, N.W., Washington, D.C. 20001
Office (202) 667-0166 Email: rmcghee@rmc-architects.com

CAREER OVERVIEW

Eighteen years experience as a project architect in private practice including eight years as partner-in-charge and owner of a Washington D.C. based architectural firm specializing in existing building rehabilitation and restoration. Experience includes over 200 projects executed. Appointed by the Mayor in September 2000 to the DC Historic Preservation Review Board (DCHPRB). Formerly Chief of Engineering at Bolling, AFB in charge of a 45-person planning, design, and construction management department, managing 607 acres, 108 facilities and 1300 housing units valued over $1 billion. Supervised execution of over 65 construction and planning projects in the last five years worth over $145 million. Prepared and presented numerous successful presentations to local authorities such as the National Capital Planning Commission, Commission of Fine Arts and DC Historic Preservation Review Board. Licensed since 1983.

AWARDS

First Award	1998 American Planning Association Outstanding Federal Planning Project of the Year: Bolling Air Force Base General Plan
Citation	1998 United States Air Force Design Award: USAF Honor Guard Complex Area Development Plan (Site and Building Design)
Citation	1998 United States Air Force Design Award: Bolling Air Force Base General Plan
Honorable Mention	*1996 United States Air Force Design Award: USAF Honor Guard Operations Building*
National Historic Preservation Award	1993 Whitelaw Hotel/Apartment Restoration (Nominated)
First Design Award	1986 Masonry Institute: The Castle
Honorable Mention	1986 Washington Chapter AIA Historic Preservation Award: The Castle
Honorable Mention	1986 Building Design & Construction Magazine Reconstruction Award: The Castle

REGISTRATION

District of Columbia, 1983
Maryland, 2003

EDUCATION

Howard University, Washington, DC, Bachelor of Architecture, 1978

Northwestern University, Evanston, Illinois, 1971-74 Completed Junior year, majoring in Anthropology

PROFESSIONAL EXPERIENCE

HOWARD UNIVERSITY, COLLEGE OF ENGINEERING, ARCHITECTURE AND COMPUTER SCIENCES DEPARTMENT OF ARCHITECTURE, 2002 - Present

Title: Adjunct Professor

R. McGHEE & ASSOCIATES, January, 1992 to November, 1995 and 2001 to present; A sole proprietorship specializing in adaptive re-use, historic preservation and general architecture.

Title: Principal in Charge of Operations
Owner and Founder of firm; Responsible for general operations including design, marketing, business development, specification writing and extensive construction administration activities. Provided general project administrative, technical and budget control, coordination with engineering and technical consultants, and local building code officials.

Major Achievements: St. Augustine Church and School Renovation and Repairs (Four Buildings, Various Projects, including Roof Repairs, HVAC Installation etc.) Architectural Consulting Services to the National Trust for Historic Preservation for the Historic Preservation Grant Program for the Shaw, Blagden Alley/Naylor Court and Mount Vernon Square Historic Districts, Sacred Heart Catholic Church. Kitchen Design/Rehabilitation, Council For African American Affairs Interior Office Build-Out, Kennedy Playground and Recreation Center Design, Rehabilitation of Irving Street Apartments, East River Park Façade Renovation, Shopping Center Façade Rehabilitation/Renovation, 1314-1320 14th Street Apartments Addition and Historic Preservation Study, 1939 12th Street Apartments, 1200 Irving Street Apartment Building Rehabilitation and numerous Signet Bank Branch Offices.

HICKOK WARNER FOX ARCHITECTS, Washington, D.C., September 2000 - August 2001
An award winning Architecture, Planning and Interior Design firm specializing in commercial architecture.

Title: Senior Project Manager
Major Achievements: Provided technical and project management for the expansion and redesign of the Potomac Center at 550 12th Street, S.W., for the JBG Companies. Expanded the 8 story 260,000SF building into an 11 story 445,000SF headquarters building for FEMA(GSA). Project required multiple early release packages to meet program goals. The 1968 precast and concrete building was demolished down to its skin and structurally modified to accommodate the new floor plate and additional 3 floors. The new blast resistant curtainwall and precast exterior was designed to be consistent with the Department of Justice Level IV security requirements. Project included the exterior plaza, new building lobbies, elevators and state-of-the art communication system. Other Activities: Prepared initial programming, site analysis and masterplan for the Presbyterian Home (Ingleside Presbyterian Retirement Community) in Washington, D.C.

CIVIL ENGINEERING DEPARTMENT, BOLLING AIR FORCE BASE, December, 1995 to September 2000; Responsible for cradle to grave execution of the base-wide construction contract program from concept design through final design and during all stages of construction for general facility and housing construction, infrastructure revitalization and general base improvements.

Title: Chief of Technical Design and Engineering
Full authority and responsibility for all long range planning, design, contract maintenance, repair and construction at Bolling AFB, Washington, D.C. Managed $3 million yearly budget for a diverse design and engineering team responsible for all Basewide project activity. Directed an annual $30 million design and construction program. Provided technical and administrative direction to a culturally diverse and multi-disciplinary staff composed of architects, engineers, construction administration personnel, CADD department and other technical personnel. Provided oversight and review of all design, construction documents, specifications, cost estimates, schedules, and preparation of design/engineering studies.

Major Achievements: Supervised creation of award winning "Base General Plan," a comprehensive planning and urban design guide that directs present and future Base development. Implemented "Vision 2020" plan that organizes an investment strategy for the comprehensive development, improvement and maintenance of the physical plant. Lead architect and designer for the most intensive development period in Base history, including a four building, $14 million Honor Guard Complex resulting in Bolling AFB becoming the premier showcase installation for the U.S. Air Force.

BELTON-MCGHEE ASSOCIATES, 1986-1992
A Washington, D.C. partnership specializing in adaptive reuse and existing building technologies, interior design and general architecture.

Title: General Partner
Partner in Charge of general operations, marketing and business development, code review, and employee development. Managed projects from $10,000.00 to $4 million. Responsible for design, contract negotiations, coordination of technical consultants, production of construction documents and specifications and construction administration on multiple projects.

Major Achievements: Project Architect for numerous projects such as the National Register listed and award winning, historic **Whitelaw Hotel/Apartments** restoration/rehabilitation.

Other Accomplishments: Guest lecturer at Howard University School of Architecture; Developed and co-edited series of workshops, lectures and study guides for candidates of the Architectural Registration Exam.

OEHRLEIN & ASSOCIATES, February, 1984 to December, 1986
An award winning architecture and historic preservation firm located in Washington, DC.

Project Architect in firm specializing in historic preservation and adaptive reuse.

ARTHUR COTTON MOORE ASSOCIATES, August, 1982 to February, 1984
An award winning architecture and planning firm located in Washington, DC.

Job Captain and Staff Architect for various projects; Major projects include: Washington Harbour, John Adams and Thomas Jefferson buildings of the U.S. Library of Congress;

SMITH SEGRETI TEPPER, August, 1979 to August, 1982
Architects and planners specializing in urban architecture, located in Washington, DC.

Project Architect and Staff Architect for various projects including: Archdiocesan Pastoral Center, Rock Creek Gardens

MEMBERSHIPS/AFFILIATIONS (Present and Past)

Board Member, DC Historic Preservation Review Board (DCHPRB) (2000-Present)
Advisor to the National Trust for Historic Preservation Board of Trustees (2004-Present)
American Institute of Architects
UJIMA Partnership in Education (1990-1996)
Board of Directors, Mt. Carmel House Women's Shelter (1992-1997)
Historic Preservation League, Washington, D.C. Chapter (Board of Directors 1996-1998)
American Planning Association

Portfolio Available Upon Request

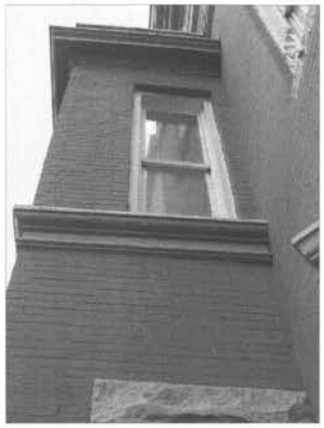
RECENT PROFESSIONAL ACTIVITES

2003 Provided Pro Bono Planning and Urban Design for recently commissioned Kennedy Play Ground at 6th and O Streets NW
2004 Named as Advisor to the National Trust for Historic Preservation Board of Trustees
2004 Re-Appointed by City Council as member of the DC Historic Preservation Review Board (3-year term)
2003 Authored biographical article on Isaiah Hatton published in *A Biographical Dictionary of African-American Architects, 1865-1945*, Dreck Wilson, Editor
2004 New Projects: 1314-1320 14th Street Apartments – 35 Units; 1939 12th Street Apartments – 12 Units
2004 Presentation: New Architecture in Historic Districts, National Trust for Historic Preservation National Conference, Louisville, Kentucky
2005 Authored Article "The Whitelaw Hotel: Restoring a Community's Crown Jewel", *Homes of Color Magazine*, March 2005

1360 KENYON ST. NW



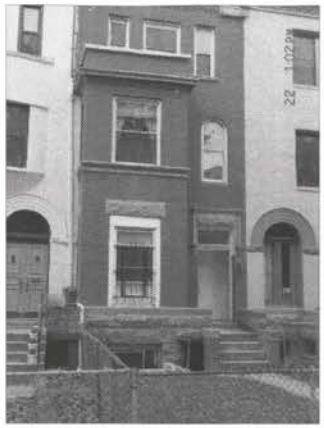
KENYON STREET ELEVATION (NORTH)



BAY AT FRONT



1360 KENYON ON RIGHT SIDE



KENYON STREET ELEVATION (NORTH)



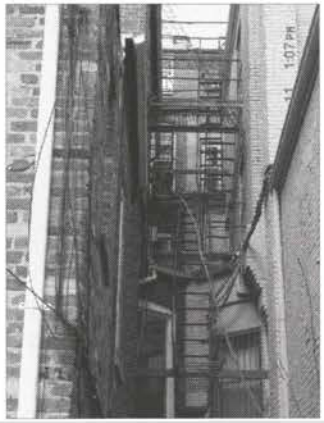
KENYON STREET ELEVATION (NORTH)



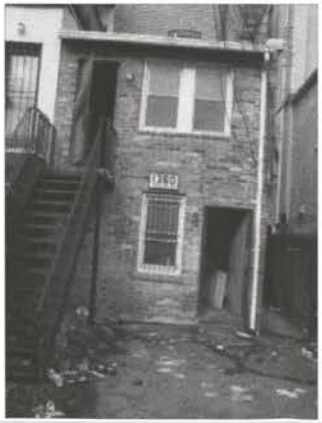
KENYON STREET ELEVATION (NORTH)



REAR ELEVATION (SOUTH)



REAR AREAWAY ELEVATION (SOUTH)



REAR ELEVATION (SOUTH)



REAR AREAWAY ELEVATION (SOUTH)



REAR AREAWAY ELEVATION (SOUTH)

Rmc

r. mcghee & associates
architecture interior design
925 S street nw washington, d.c. 20001
Phone 202/667-0166 Fax 202/667-0165

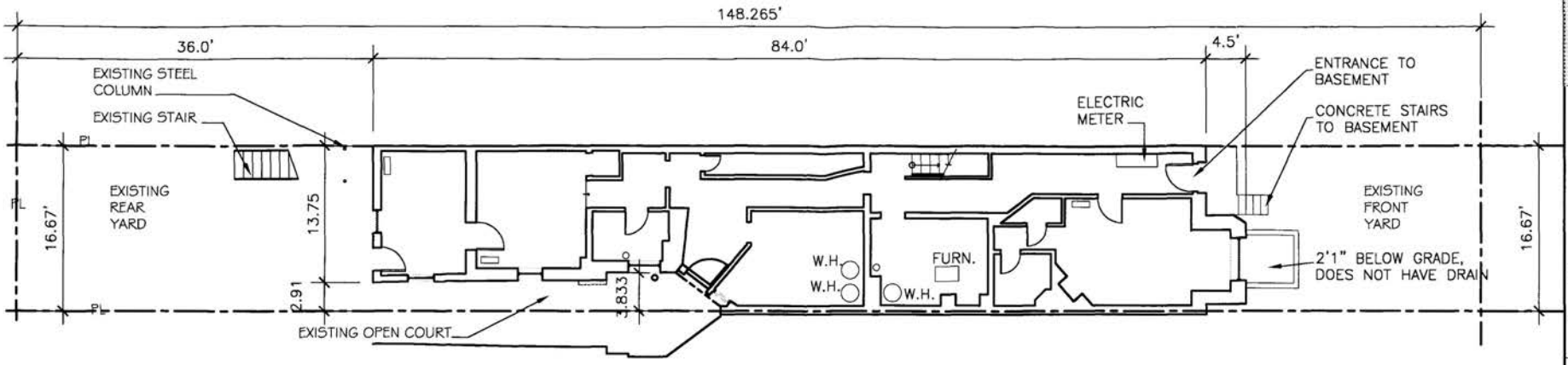
Revisions	
No.	Date

Project No.	Structural	Issue Date
	MEP	
	Civil	

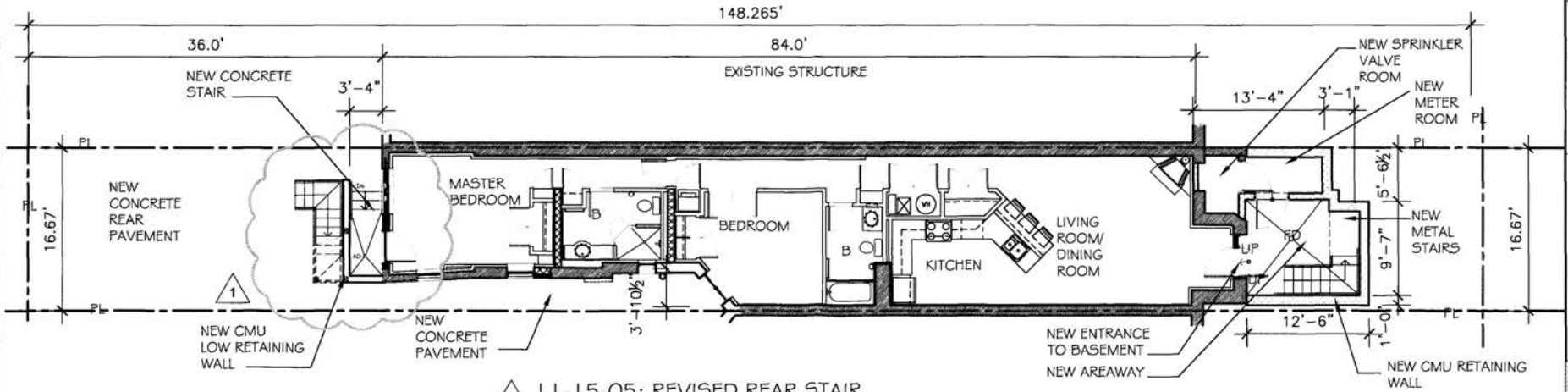
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1360 KENYON ST, NW
WASHINGTON, DC 20010

Sheet Title
SITE PHOTOS

CS-P



1 EXISTING BASEMENT
3/32" = 1'-0"



1 11-15-05: REVISED REAR STAIR

2 PROPOSED BASEMENT
3/32" = 1'-0"

A-3

Issue Date
10-31-2005

ZONING SUBMISSION
EXISTING BASEMENT AND PROPOSED FLOOR PLAN

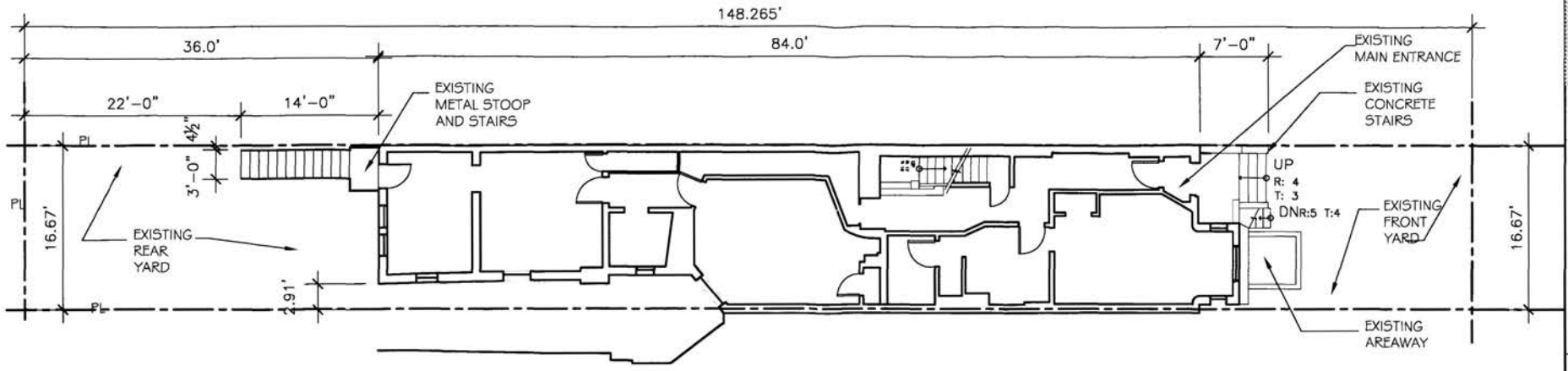
Sheet Title

r. mcghee & associates
architecture interior design
925 S street nw washington, d.c. 20001
Phone 202.667-0165 Fax 202.667-0165

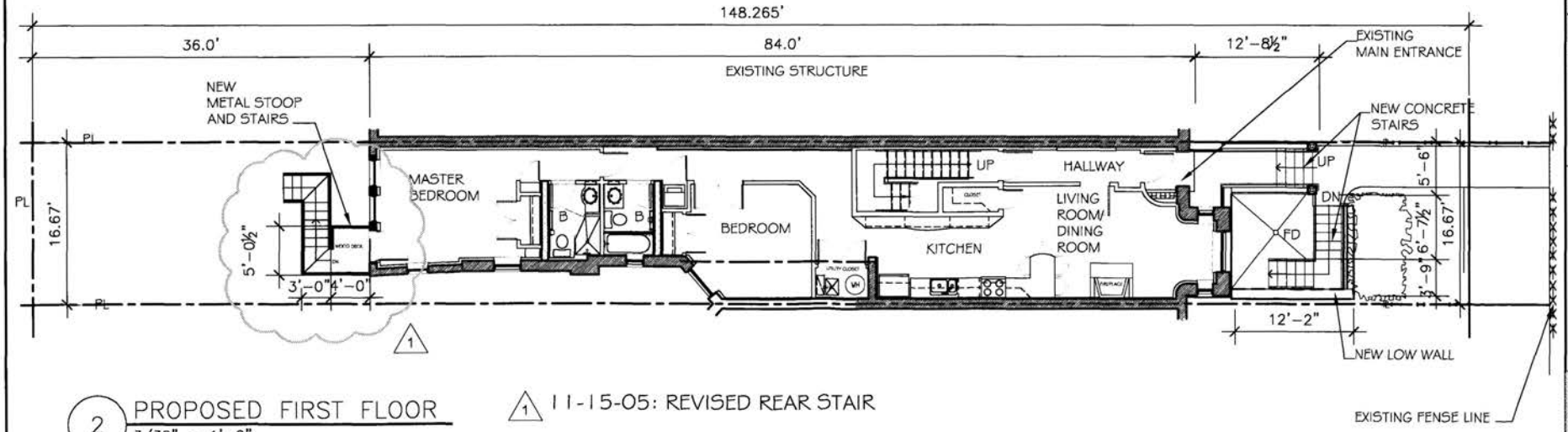
Project No.
2005-00

Project Title
1360 KENYON STREET, N.W.
WASHINGTON, D.C.

RMC



1 EXISTING FIRST FLOOR
3/32" = 1'-0"



2 PROPOSED FIRST FLOOR
3/32" = 1'-0"

1 11-15-05: REVISED REAR STAIR

A-4

r. mcghee & associates
architecture interior design
925 S street nw washington, d.c. 20001
Phone 202/667-0166 Fax 202/667-0165

Issue Date
10-31-2005

ZONING SUBMISSION
EXISTING FIRST FLOOR AND PROPOSED FLOOR PLAN

Project No.
2005-00

Project Title
1360 KENYON STREET, N.W.
WASHINGTON, D.C.

Sheet Title

RMC

Lindsley Williams
Land Use, Planning and Zoning Consultant
to the Law firm of
HOLLAND & KNIGHT LLP
2099 Pennsylvania Avenue, NW
Washington, DC 20006

(202) 828-1873

November 15, 2005

I. Introduction and Expertise

II. Overview: Rebuttal to Report of the Office of Planning re BZA Case No. 17388

III. Site History

IV. Present Building First Built Prior to 1920, one of nine surviving and likely eleven original similar 4 story buildings

A. Zoned either Residential C or Residential D under rules prevailing 1920-1958, that zone allowing apartments a matter of right and considerable density as well, more in D that C. FAR limits not established in DC until 1958. Whether C or D not determined, neither required rear yards of more than 15 feet. Height was limited by Height Act 60 feet along streets 60-65 feet wide (Kenyon is 62.5 feet wide).

B. 1958 zoning applied R-4, which limits lot occupancy for this property ("all other") to 40%, which this property has exceeded since May 12, 1958. *(If a map case were now being heard for this group of 4-story row houses, I would suggest R-5-C as the "best fit." In 1958, R-5-B would have been the closest, with R-5-D for the apartment houses.)*

C. This building only was reconfigured and enlarged to house nine (9) separate apartments, as best as can be determined, prior to May 12, 1958. This is nearly twice as many units, with separate kitchens and bathrooms, than any other *seemingly comparable* building in the pertinent row, indeed any other building that started as a row dwelling on the Square.

D. There are two buildings built originally and still in apartment use, the Kenyon and a very similar structure on Lamont Street, same square – each of which abuts the existing C-3-A Zone (and former "First Commercial" zone).

E. ***See Aerial View Diagram highlighting Site and two apartment houses.***

V. The other buildings register as now having multiple units, three with five residential condominium units each and two other "parking" units, one with six total units (likely four and two, no details yet posted).

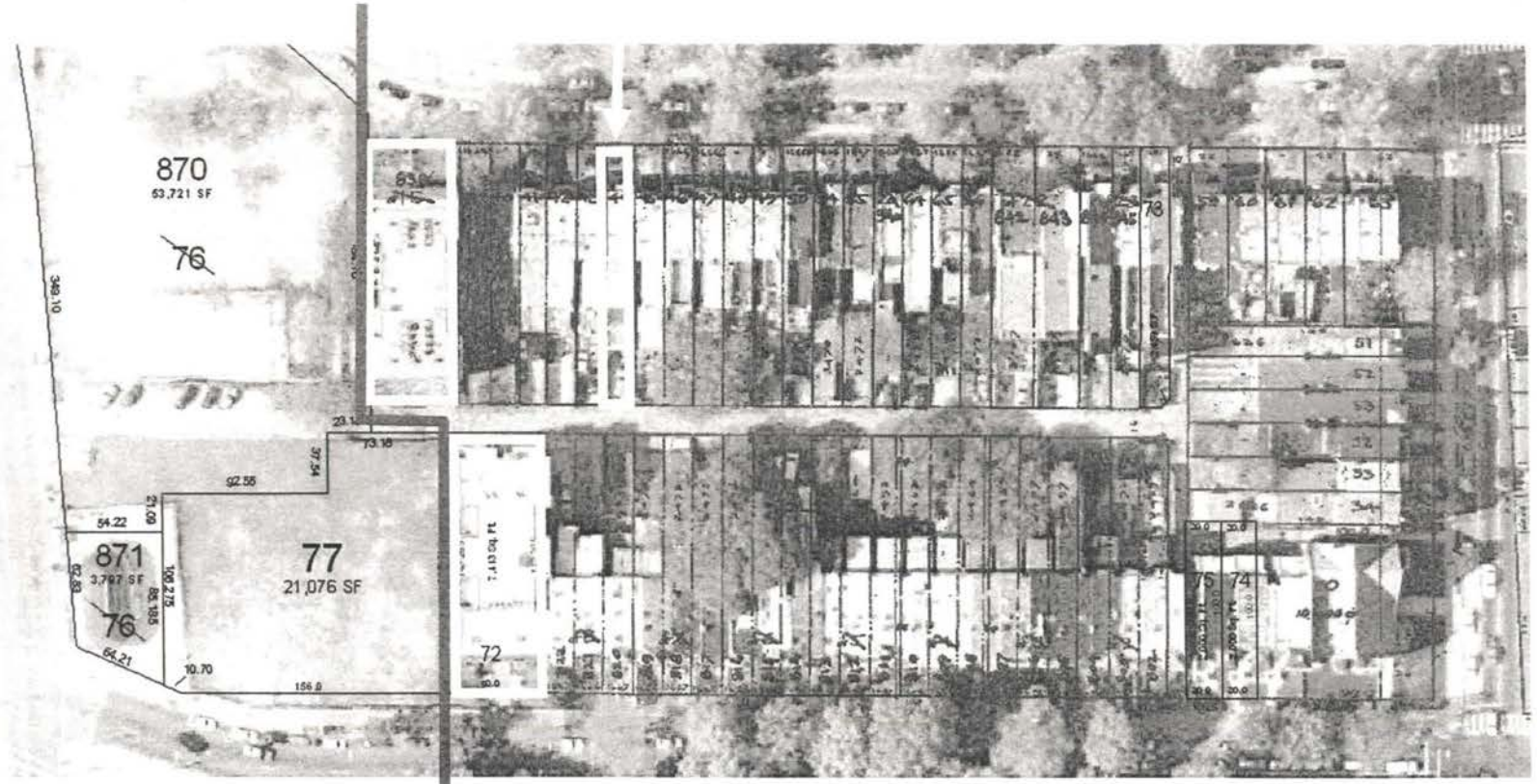
VI. **Conclusion Reached**: The building on **the Site meets Test One as it is exceptional, even unique**. There is no other walkup apartment building of anything close to nine (small) units converted to that use from former row dwelling stock in the area. This is the building now there from which the case logic flows (St. Viator).

VII. Applicant seeks to convert building to one with five separate units, reducing its density by nearly 50%, becoming, if you will, less non-conforming. Owner and architect and real estate experts all testified as to "practical difficulties" of other development options. Suffice it to say that I find their statements collectively sufficient to **conclude that Test Two is met**.

VIII. As to final test, this strives to insure that no variance granted results in any harm to the integrity of the Zoning Regulations and Map. The use regulations for R-4, while indicating that it is not to become an apartment zone, also contemplate that existing structures will remain (read together with Chapter 20) as long as they do not expand. While this building expands upward in its rear, it does not cover an additional square inch of "footprint" (lot occupancy) nor become any higher in feet or than it already is (44 feet) or stories (4). It lowers the number of units to five, about half of the present use and in this sense becomes more consistent with the regulations. The Comp Plan calls for this area to be "moderate density" which this is by OP's own guidelines. Since 1958, Metro has arrived and with it the logic of adding density thoughtfully when Metro portals are nearby, as now here. ***See second diagram showing Land Uses, Comprehensive Plan, and future uncertainties.*** Conclusion is that **the Site as planned meets Test Three as it does not propose a use or program at odds with the Regulations or adjacent uses as they have emerged**.

Diagram of Lots on Square 2844 Revealing Just Three Uses that Assessment Records Denote as Walk Up Apartments Rental orCondominiums

Applicant's Site



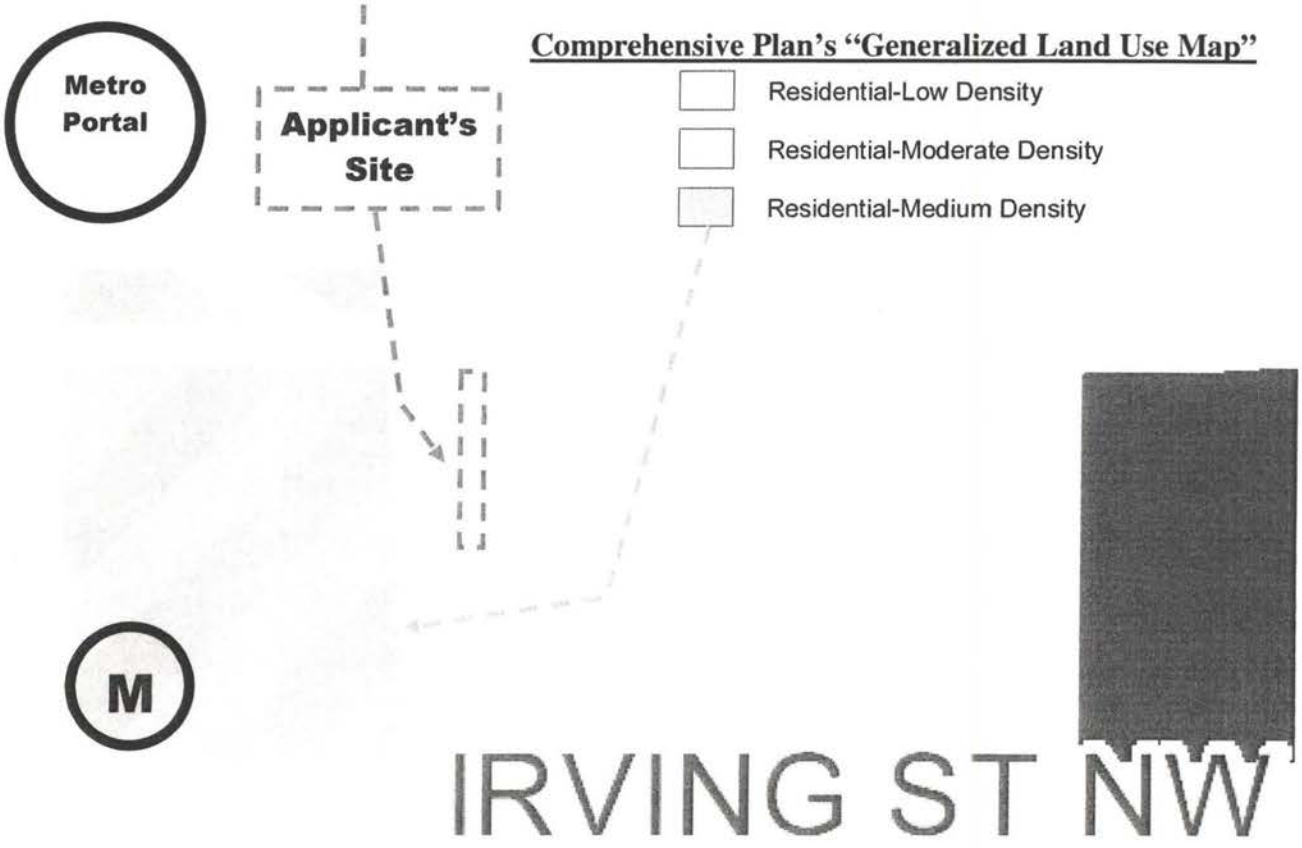
C-3-A | R-4

BZA 17388 -- Office of Planning Diagrams of Square 2848:
Locating "Metro" Green Line Portal and "Applicant's Site"

Existing Uses



Note above map's depiction of alley extending west to limits of rear of the "Kenyon" apartment house.



In addition, both sides of 14th Street from Rhode Island Avenue to Columbia Heights are included as areas of "considerable uncertainty" for future changes in OP's October 6, 2005 "DRAFT" "Land Use Change" map.

imposed to prevent circumvention of the Double Jeopardy proscription, which would occur, for example, if a convicted individual were held indefinitely in the cell block, subject to imposition of a more severe sentence.

[2] Neither *Green* nor *Rowley* offers a standard for determining whether resentencing has been imposed with promptness sufficient to comply with the Double Jeopardy Clause. Indeed, in *Rowley*, the court stated that it "need not determine the exact point in time which fixes the ultimate limit to the court's power to make the correction." *Rowley v. Welch, supra* at 356, 114 F.2d at 504. The *Rowley* court was satisfied that a one-half hour delay was within the limit; in *Green*, we were satisfied that an hour was sufficiently prompt. Although the case at bar presents a period of greater duration between sentencing and resentencing, we find, by reference to the purpose of the promptness requirement, that the seven-hour delay is constitutionally sustainable.

The record in this case is barren of any indication that the seven hours appellant was held following imposition of his first, inadvertent sentence represented an attempt by the government to circumvent the protection of the Double Jeopardy Clause. Appellant was detained in the cell block for a legitimate administrative purpose. He had been transported that morning from the District of Columbia Jail, where he had been committed pending sentence, and was held here awaiting return to that facility. We judicially notice that prisoners are brought to court from that and other local prison facilities in regularly scheduled trips at the beginning and end of the court day. As such, appellant's presence in the courthouse, and the concomitant failure to have transferred custody of him to executive authorities, was fortuitous insofar as resentencing was concerned. We are not here presented with a situation in which transfer of custody was delayed to facilitate imposition of a more severe sentence, or in which such delay was occasioned by neglect or indifference. Nor do we have in this case a trial court changing its mind with respect to the first sentence imposed. Rather, we review correction of a sentence never intended. Accordingly, the trial court's action is

Affirmed.



Luis DE AZCARATE et al., Petitioners,

v.

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, Respondent,

Marvin Pitkin and Walter J. Schafer, Intervenors.

No. 12650.

District of Columbia Court of Appeals.

Argued May 11, 1978.

Decided July 14, 1978.

Judicial review was sought of final order of the Board of Zoning Adjustment which granted landowner a variance from minimum lot-width requirement, thus permitting landowners to construct single-family residence. The District of Columbia Court of Appeals, Kern, J., held that: (1) Board was authorized to grant variance due to extraordinary situation concerning lot where original parcel out of which lot was subdivided was susceptible subdivision into three conforming parcels, zoning office personnel on three occasions implicitly found lot conformed to width requirements, lot owner and predecessor proceeded in good faith and dispute over lot width was due to actions of zoning officials which were later found to be in error, and (2) failure of lot to meet width requirement could not accurately be described as a direct consequence of sole and affirmative acts of owner and predecessor in title where zoning department employees played significant part by

approving three separate applications concerning subdivision of parcel creating lot, and thus self-created hardship rule did not preclude variance.

Affirmed.

1. Zoning ⇐489

Statutory language allowing the Board of Zoning Adjustment to issue variance from zoning regulations for "other extraordinary or exceptional situation or condition of a specific property" served as a grant of authority to Board empowering it to provide variance relief, in appropriate cases, to extraordinary or exceptional conditions brought about after the original adoption of the zoning regulations. D.C.C.E. § 5–420(3).

2. Zoning ⇐489, 536

Once an extraordinary and exceptional situation or condition has arisen with respect to property, the owner must show peculiar and exceptional practical difficulties or exceptional and undue hardship in order to obtain variance from zoning regulations; furthermore, Board of Zoning Adjustment may grant variance relief only where there is no substantial detriment to the public and no impairment of the intent, purpose and integrity of the zone plan. D.C.C.E. § 5–420(3).

3. Zoning ⇐536

Application for use variance from zoning regulations requires a greater burden of proof than an application for an area variance.

4. Zoning ⇐496

The extraordinary or exceptional condition which is the basis for use variance need not be inherent in the land, it can be caused by subsequent event extraneous to the land itself. D.C.C.E. § 5–420.

5. Zoning ⇐496

The term "extraordinary or exceptional situation or condition" in statute providing for variances from zoning regulations was designed to serve as an additional source of authority enabling the Board of Zoning Adjustment to temper the strict application of the zoning regulations in appropriate cases, subject to limitations set forth in the statute. D.C.C.E. § 5–420.

6. Zoning ⇐503

Board of Zoning Adjustment was authorized to grant variance from minimum-width requirement of lot for single-family residential use where original parcel had been susceptible to subdivision into three conforming parcels, zoning office personnel on three occasions implicitly found that lot in question conformed to width requirements, lot owner and predecessor proceeded in good faith following subdivision of original parcel, homes were constructed on two out of three newly created lots and present dispute was due to actions of zoning officials which were later found to be in error. D.C.C.E. § 5–420(3).

7. Zoning ⇐497

The self-created hardship rule applicable to requests for variances from zoning regulations is a manifestation of equitable principle of estoppel; if an applicant for an area variance or his predecessor in title committed an affirmative act which directly resulted in the hardship complained of, the variance relief will be withheld.

8. Zoning ⇐497

Failure of configuration of lot to meet width requirements could not accurately be described as a direct consequence of the sole and affirmative acts by lot owner and predecessor in title where zoning department employees played a significant part by approving three separate applications during original subdivision creating lots, and thus self-created hardship rule did not apply to preclude variance from lot width requirements. D.C.C.E. § 5–420.

James L. Montgomery, Washington, D. C., for petitioners. Nelson Deckelbaum, Washington, D. C., was on the brief for petitioners.

Leo N. Gorman, Asst. Corp. Counsel, Washington, D. C., for respondent. Richard W. Barton, Deputy Corp. Counsel, Wash-

ington, D. C., also entered an appearance for respondent. Respondent adopted the brief of the intervenors.

Whayne S. Quin, Washington, D. C., with whom Norman M. Glasgow and Iverson O. Mitchell III, Washington, D. C., were on the brief, for intervenors.

Before KELLY, KERN and YEAGLEY, Associate Judges.

KERN, Associate Judge:

Petitioners seek review of a final order of the District of Columbia Board of Zoning Adjustment (Board) which granted intervenors a variance from the R–1–A district's minimum lot-width requirement of 75 feet, thereby permitting them to construct a single-family residence on the lot in question.

The history of the present dispute can be briefly summarized. Lot 17, for which the Board granted the area variance was originally part of a considerably larger lot designated Lot 13. Lot 13 was a triangular-shaped parcel of approximately 26,000 square feet, located in the R–1–A zone.[1] During July 1975, Lot 13 was subdivided into three lots and this subdivision was duly recorded at the Office of the Surveyor of the District of Columbia. Subsequently, Lot 17 was enlarged slightly to include an additional strip of land and this subdivision was also recorded. Following the approval of the second subdivision, intervenor-Pitkin applied for and *received* a building permit for the construction of a single-family dwelling on Lot 17.[2]

As approved, Lot 17 was an irregular configuration. The main body of the property was connected to the street by a strip of land 30 feet wide and 70 feet long. A single-family home was to be constructed on the main portion of the lot, which contained approximately 8,500 square feet. Intervenor-Pitkin did not proceed with construction of the dwelling and, during December 1976, he sold Lot 17 to intervenor-Schafer on condition that the property was suitable for the erection of a single-family residence. During this same time-frame, single-family homes were constructed upon each of the other two lots carved from the original Lot 13.[3]

When intervenor-Schafer applied for another building permit in February 1977, his application was rejected on the ground that Lot 17 failed to conform with the width requirements of the R–1–A zone; specifically, the Zoning Regulations Division concluded that Lot 17 was substandard since its width measured approximately 62 feet although the R–1–A zone requires a 75-foot width.[4]

1. The minimum lot-area requirement for this particular type of zone is 7,500 square feet. D.C. Zoning Regs. § 3301.1. No one disputes that intervenors meet this requirement.

2. Prior to recording a proposed subdivision, the Office of the Zoning Regulations Division reviews the subdivision to determine whether or not it is in accordance with the applicable zoning regulations. Also, D.C. Zoning Reg. 8103.1 provides: ". . . a building permit shall *not* be issued . . . *unless* such structure complies with the provisions of these regulations." (Emphasis added.) Presumably, such reviews occurred on three occasions: first, when Lot 17 was recorded; second, when the addition to Lot 17 was added and recorded; and third, when the first building permit was issued.

3. Petitioners do not allege that the other two lots upon which the houses were built are substandard in any respect.

4. The record does not clearly indicate the basis for the zoning authorities inconsistent decisions—*viz.*, the grant of a building permit followed by the rejection of an application concerning the very same lot. One of the Board's findings of fact indicates that ". . . after [a] *reinterpretation* and application of the definition of width of lot for lot 17, by the Zoning Regulations Division, the applicant was told the lot no longer complied with such definition and that all previous approvals had been in error." (Emphasis added.) Counsel for intervenors, during the hearing before the Board, described the different techniques of computation which purportedly produced the inconsistent results. Regardless of the methodology employed, the record indicates that on April 13, 1976, the Zoning Regulations Division concluded that the average width of Lot 17 was 76 feet. A later computation made when intervenor-Pitkin's application for a building permit was submitted, produced an average lot width figure of 50 feet. This figure was later withdrawn when the Zoning Regulations Division concluded that Lot 17 had an average width of 62 feet. Intervenors raise no specific challenge to the propri-

Following the denial of his application for a building permit, intervenor-Schafer sought to obtain a variance from the 75-foot width requirements of the R–1–A zone.[5] After a public hearing, the Board, by unanimous vote, granted the area variance on the ground intervenors had established a practical difficulty in utilizing the lot. The Board concluded ". . . that [without a variance] the unusual shape of the lot renders it unusable for any purpose." The Board further concluded that relief, by way of a variance, could be granted without ". . . substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan."

D.C.Code 1973, § 5–420(3) provides in pertinent part:

> 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 a specific piece of 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 such property, [a variance may be granted]. [Emphasis added.]

Petitioners' first contention is the Board lacked the statutory authority to grant a variance on the ground of any alleged difficulty in the application of the lot-width zoning regulation to Lot 17 since:

> "exceptional situation or condition of a specific piece of the property" refers to a situation or condition connected to the property. It does not include the circumstances here where invalid subdivisions and an invalid permit were issued because those circumstances are not conditions of a specific piece of property. [Petitioner's brief at 5.]

[1] Intervenors respond, *inter alia*, that the grant of authority contained in the statutory phrase "or other extraordinary or exceptional situation or condition of a specific property" permits the Board to grant a variance in this case. We agree with the intervenors that this statutory language serves as a grant of authority to the Board empowering it to provide variance relief, in appropriate cases, to extraordinary or exceptional conditions brought about after the original adoption of the zoning regulations.[6]

This court has recognized the purposes served by a procedure through which a variance can be obtained:

> It is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack . . . and prevent usable land from remaining idle. [*Palmer v. Board of Zoning Adjustment*, D.C.App., 287 A.2d 535, 541 (1972). *See Daniel v. Board of Zoning Adjustment*, D.C.App., 329 A.2d 773, 775 (1974); *Salsbery v. Board of Zoning Adjustment*, D.C.App., 318 A.2d 894, 896 (1974).]

[2] *Palmer v. Board of Zoning Adjustment, supra* at 539, did observe that "few cases . . . [have construed] the term 'extraordinary or exceptional situation . . . of a specific piece of property'." Moreover, the legislative history of § 5–420

ety of any alleged changes by the Zoning Regulations Division in their interpretation of the term "lot width."

5. A variance of approximately 16% was needed to permit utilization of Lot 17. Intervenors contend, without contradiction, that the property satisfied every other requirement of the R–1–A zone. The record indicates that the complaints of the petitioners to the proposed construction of a single-family home were entirely esthetic.

6. Consideration of all of petitioners' contentions is unnecessary in light of our resolution of this case. The thrust of petitioners' argument is that the Board lacked authority to grant a variance. Assuming the Board possessed statutory authority to act, petitioners cannot contend persuasively that its factual findings are not supported by and in accordance with reliable, probative and substantial evidence in the whole administrative record or that the Board's conclusions do not flow rationally from these findings. *Ass'n for Preservation of 1700 Block of N Street, N.W. and Vicinity v. BZA*, D.C. App., 384 A.2d 674, 677 (1978).

offers no explanation of the standard. *Id.* In that case, this court did not attempt to define comprehensively the content of the term "extraordinary or exceptional situation or condition"; instead, decisions from other jurisdictions are cited which defined the term to include economic, geographic or topographic conditions or *a condition created by the zoning authority's zoning of a lot* "partly for residence and partly for business." *Id.*[7]

[3, 4] A second decision of this court suggests that petitioner's claim is not well taken; *viz.*, that a variance can be granted only where the extraordinary or exceptional situation or condition inheres in the land itself at the time of the passage of the statute. In *Clerics of St. Viator, Inc. v. Board of Zoning Adjustment*, D.C.App., 320 A.2d 291, 293–4 (1974), this court rejected the contention that "only a hardship which is inherent in the 'land' can be the basis of a variance." In that case, a *use* variance was sought in order to permit the conversion of an existing religious seminary into a nursing home.[8] *Id.* at 292. After concluding that an exceptional situation had been shown by the applicant, *viz.*, a serious and continuing decline in the seminary's enrollment, the court stated:

> We think that the statute is clear. It provides that "other extraordinary or exceptional situation or condition of a specific piece of property" may be grounds upon which a variance may be granted. The Board is in error when it takes the position that a variance may only be issued when the required hardship inheres in "land" as opposed to "property." [*Id.* at 294.]

In effect, the extraordinary or exceptional condition which is the basis for a use variance need not be inherent in the land, but can be caused by subsequent events extraneous to the land itself, such as the failure of the seminary to remain a viable institution in *Clerics of St. Viator, Inc., supra.*[9]

[5] We also need not in this case precisely define the contours of the term "extraordinary or exceptional situation or condition." In our view, that term was designed to serve as an additional source of authority enabling the Board to temper the strict application of the zoning regulations in appropriate cases, subject to the limitations found in Section 5–420. It is sufficient for the present to conclude that the facts of this case fall within the ambit of that term. *See Palmer v. Board of Zoning Adjustment, supra* at 542 (the nature and extent of the burden justifying an area variance is best left to the facts and circumstances of each case).

[6] Consequently, we hold that the Board was authorized to grant an area variance in the instant case due to the extraordinary situation concerning Lot 17 which created "peculiar and exceptional practical difficulties" for the intervenors. However, because it is not necessary to define comprehensively the statutory term at issue here, we will recite those factors which we found significant to the outcome in the instant case. First, the record suggests and it was asserted during oral argument by intervenors, without contravention by peti-

7. During oral argument, counsel for petitioners contended that a broad interpretation of the phrase "extraordinary or exceptional situation or condition of a specific piece of property" would vest the Board with unbridled authority. We disagree. D.C.Code 1973, § 5–420(3) itself imposes restraints upon the Board's discretion. Once an extraordinary and exceptional situation or condition has arisen, the owner of the property must show "peculiar and exceptional practical difficulties" or "exceptional and undue hardship." Furthermore, the Board may grant variance relief pursuant to the statute only where there is no "substantial detriment to the public good" and no "[impairment of] the intent, purpose, and integrity of the zone plan."

8. That an application for a use variance requires a greater burden of proof than for an area variance is well-established in this jurisdiction. *Ass'n for Preservation of 1700 Block of N St., N.W. and Vicinity v. BZA, supra* at 677; *Palmer v. BZA, supra* at 541.

9. This is not to say that *any* subsequent event will invariably result in unusual conditions supporting the grant of a variance, particularly if an affirmative act of the applicant is the direct and sole cause of the hardship complained of.

tioners, that the original Lot 13, although of irregular shape, was susceptible to subdivision into three conforming parcels. Second, zoning office personnel, on three occasions, implicitly found that Lot 17 conformed to the lot width requirements of the R–1–A zone. Third, intervenors proceeded in good faith, following the subdivision of the original parcel and, eventually, two homes were constructed on two of the three newly-created lots. Finally, during oral argument before this court, counsel for the Board conceded that the present dispute was due to the actions of the zoning officials which were later found to be in error.

Petitioner's second contention is that the "self-created hardship rule" bars variance relief where the affirmative act of the applicant, or his predecessor in title, is the sole cause of the hardship complained of.[10] At the outset, petitioner is confronted by *A.L.W., Inc. v. Board of Zoning Adjustment*, D.C.App., 338 A.2d 428, 431–32 (1975), where it is said:

> In New York, for instance, the rule seems to be "that the 'self created hardship' concept does not apply to area variance cases, *i. e.*, the fact that the condition complained of was self created is not dispositive of the matter but only one factor to be considered by the zoning board in determining whether to exercise its discretion and grant an area variance." [*Id.* at 431–32.]

Petitioner seeks to avoid the import of this decision by arguing:

> The type of affirmative action creating the [zoning] difficulty as here has to be distinguished from the type of self-created difficulty which arises when the applicant has purchased the lot subject to the zoning ordinance. The latter, the purchase type of self-created difficulty, does not bar relief for an area variance. . . . The distinction from the facts before the court in this petition was recognized in *A.L.W., Inc. [v. Board of Zoning Adjustment, supra]*, at 432 when the court said:
>
> > Unless the applicant himself—as a result perhaps of some prior conveyance—is responsible for the irregular shape of the property, he cannot as a practical matter improve the lot in any way that would enable him to realize income or sell it to a purchaser for value. . . .
>
> The act of the applicant or a former owner in the chain of title creating the condition does bar relief. [Petitioner's brief at 11.]

However, a recent decision of this court, *Association for Preservation of 1700 Block of N Street, N.W. and Vicinity v. Board of Zoning Adjustment*, D.C.App., 384 A.2d 674, 678 (1978), undermines petitioners' argument. In that case, the Board granted a parking variance.[11] After concluding that the Board properly treated the application as an area variance rather than as a use variance, the court rejected the petitioners' contention that the rule of self-created hardship applied.[12]

10. Petitioner cites 2 A. Rathkopt, Law of Zoning § 48–1 (3rd ed. 1972), for the proposition that:

> if the peculiar circumstances . . . have been themselves caused or created by the property owner or his predecessor in title, the essential basis of a variance, *i. e.*, that the hardship be caused *solely* through the manner of operation of the ordinance upon the particular property is lacking. In such a case, a variance will not be granted. [Emphasis in original.]

11. The opinion notes that

> Provision of the required off-street parking with the proposed building on the subject property is impossible due to its irregular shape; furthermore, even if the lot were rectangular in shape, only thirty parking spaces—rather than the required forty—could be provided with the building. There would be further hardship to the YMCA if the required parking were to be placed below the proposed swimming pool. Each such parking space would cost over $20,000 to provide, whereas the normal cost of each off-street parking space located within the garage structure is between $6,000 and $8,000. [*Id.* at 676.]

12. The problem faced by the applicant (YMCA) in that case was "self created" in the narrow sense that the configuration of the lot, the design of the building, and the zoning regulations in force combined to create the hardship. Although it is clear that given these variables the YMCA could not readily comply with the zoning code on the lot in question, it is equally

Petitioners state that whatever hardship faced the YMCA "was self-created to the extent of Metro YMCA having *full knowledge* of all problems with the alleged shape of the land, the type of zoning, and costs of putting in the parking *prior* to the purchase of the property in March 1974." The YMCA's self-created hardship in not a factor to be considered in an application for an area variance, however, as that factor applies only to a use variance. [*Id.* at 678. *See Salsbery v. Board of Zoning Adjustment*, D.C. App., 357 A.2d 402, 404 (1976); *A.L.W., Inc. v. Board of Zoning Adjustment, supra* at 431 (emphasis in original).] [13]

[7, 8] Regardless of the impact of *A.L.W., Inc. supra*, and *Association for Preservation of 1700 Block of N Street, N.W., supra*, on the applicability of the self-created hardship rule in area variance cases, we think petitioners' argument founders for yet another reason; *viz.*, the particular facts of this case. The self-created hardship rule is, in fact, a manifestation of the equitable principle of estoppel; that is, where an applicant for an area variance, or his predecessor in title, has committed an *affirmative act* which directly results in the hardship complained of, variance relief will be withheld. 2 A. Rathkopt, Law of Zoning, § 48–6 (3rd ed. 1972). However, the hardship at issue here—the failure of the configuration of Lot 17 to meet the lot-width requirement—cannot be accurately described as the direct consequence of the intervenors' sole and affirmative acts; here, the zoning department employees played a significant part by approving three separate applications during the original subdivision of Lot 13. Having concluded that Section 5–420(3) authorized the Board to grant an area variance in this case and that the doctrine of self-created hardship, whatever its validity in this jurisdiction to area variances, is inapplicable on the facts of the present dispute, we are unwilling to disturb the decision of the Board.

Affirmed.



Joseph and Mary EDISON, Appellants,

v.

Michael and Joyce SCOTT, Appellees.

No. 12021.

District of Columbia Court of Appeals.

Submitted Jan. 10, 1978.

Decided July 14, 1978.

Plaintiff brought action to recover for property damages sustained when car allegedly stolen from defendant allegedly sideswiped his car. The Superior Court, District of Columbia, George H. Goodrich, J., entered judgment in favor of plaintiff,

clear that the YMCA's difficulties stemmed directly from its decision to erect the facility on a small, irregularly shaped parcel of land.

13. In *Salsbery v. BZA, supra* at 404, and *A.L.W., Inc. v. BZA, supra*, it appears that the self-created hardship rule was found inapplicable to variances where the purchaser-applicant bought the property with knowledge of its nonconformity with the zoning regulations. In *A.L.W., supra* at 431–2, it is stated:

> the fact that the owner knew or should have known of the area restrictions *before he purchased the property* does not alter the lesser standard [used in area variances as opposed to use variances]. In New York, for instance, the rule seems to be "that the 'self created hardship' concept does not apply to area variance cases." [Emphasis added.]

In *Salsbery, supra* at 403–04, the applicant for a use variance purchased the commercial property without conditioning the contract upon the grant of a variance for a different nonconforming use. In that case, the economic hardship stemmed from the fact that the applicant made no efforts to protect his rights. In that context, the court's statement is entirely appropriate:

> If there is hardship present, it stems from the fact that petitioner contracted to purchase the existing property . . . without conditioning the contract upon the securing of a use variance. A self-inflicted hardship, such as this, will not support the grant of a use variance. [*Id.* at 404.]

Accordingly, if the payment of child support is to be made a condition of probation, the procedural requirements should be similar to those required where restitution is ordered. As the court stated in *Morgan v. Wofford*, 472 F.2d 822, 827 (5th Cir.1973):

> prior notice and an opportunity to be heard are prerequisite where $7,000 restitution is ordered by a court of law to be paid out of appellant's weekly salary and the penalty for failure to pay is imprisonment. Especially when criminal sanctions may be involved, we have always been careful to surround the procedures through which the state may deprive a defendant of freedom with safeguards against possible miscarriages of justice.

See Sloan v. United States, 527 A.2d 1277, 1289–90 (D.C.1986) (restitution). Moreover, to enable appellate courts to review a child support order, the order must indicate the manner in which the amount has been determined. *See Murville v. Murville, supra*, 433 A.2d at 1109; *People v. Pettit*, 88 Mich.App. 203, 205, 276 N.W.2d 878, 880 (1979). *See also United States v. Lemire*, 232 U.S.App.D.C. 100, 127, 720 F.2d 1327, 1354 (1983), *cert. denied*, 467 U.S. 1226, 104 S.Ct. 2678, 81 L.Ed.2d 874 (1984).

In sum, the trial judge had a constructive idea which properly focused on appellant's rehabilitation. In the rush of events, however, the implementation of the idea was flawed. Dealing with child support issues is difficult in any event. When attempted at a sentencing hearing in a criminal case, it cannot be accomplished summarily, but requires reasonable procedural protections for the defendant. It may be that the amount determined could be permissible since two children are involved and appellant may be able to pay that amount when he is employed. On the other hand, the children may have other sources of support or appellant may have other obligations which would affect his obligation to pay once he is employed. In any event, the Guidelines provide for some flexibility in setting the amount of child support based on the circumstances of the affected parties, *see* Guidelines, *supra*, 37 D.C.Reg. at 3725–27, which, on remand, the judge may wish to apply.[12]

Accordingly, we hold that the trial judge abused her discretion in setting the amount of the child support payment, and we reverse that part of the judgment and remand the case for further proceedings consistent with this opinion.

Affirmed in part; reversed in part.

2071; *Freeman v. Freeman*, 397 A.2d 554, 556 (D.C.1979). These considerations may make a probationer's compliance with such a condition difficult to evaluate, especially where, as here, the probationer was unemployed at the time the terms of probation were imposed.

12. Under the Guidelines, a non-custodial parent of two children who earns more than $7500 and less than $15,000 annually would, absent unusual circumstances, be required to pay 26 percent of his or her gross income for child support. There is no percentage for gross income under $7501, although the minimum amount of child support required is $50 a month. If appellant earns under $7501 annually, requiring him to pay $50 a week could result in his paying as much as 32 percent of his gross income. Here the judge imposed an amount in excess of what the Guidelines would appear to permit since, as a non-custodial parent (so far as the record indicates) of two children under the age of six who earned less than $7501, appellant could not be ordered, except in unusual circumstances, to pay $50 a week in child support. 37 D.C.Reg. at 3731. Setting appellant's child support obligation above the amount typically required under the Guidelines may be permissible, but we cannot tell from the record. *Cf.* footnote 10, *supra*.

William GILMARTIN, et al., Petitioners,

v.

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, Respondent.

David C. Barnes, Intervenor.

No. 87–1253.

District of Columbia Court of Appeals.

Argued May 22, 1989.

Decided Aug. 29, 1990.

Adjoining landowners petition for review of order of board of zoning adjust-

ment, granting landowner's application for area variance for proposed parking space and permitting parking in front of landowner's property. The Court of Appeals, Belson, J., held that: (1) property for which owners sought variance from minimum parking space size requirements satisfied uniqueness requirements; (2) board's authority to grant variance relief for exception or extraordinary conditions was not limited to conditions brought about after adoption of zoning regulations; but (3) board was required to determine whether locating parking space within structure of carriage house was feasible and whether such alternative was, under circumstances, itself a practical difficulty.

Remanded.

1. **Zoning and Planning ⇐509**

Property for which owner sought variance from minimum parking space size requirements satisfied uniqueness requirements; unique confluence of location of carriage house on property in relation to property boundaries on north and easements on south made it necessary for owners to seek variance. D.C.Code 1981, § 5–424(g)(3).

2. **Zoning and Planning ⇐496**

Zoning statute does not preclude approval of variance where uniqueness arises from confluence of factors; extraordinary or exceptional condition must affect single property. D.C.Code 1981, § 5–424(g)(3).

3. **Zoning and Planning ⇐489**

Board of Zoning Adjustment's authority to grant variance relief for exceptional or extraordinary conditions was not limited to conditions brought about after adoption of zoning regulations. D.C.Code 1981, § 5–424(g)(3).

4. **Zoning and Planning ⇐489**

"Other extraordinary or exceptional situation or condition of specific piece of property," as required by statute to warrant variance, need not have preceded promulgation of zoning regulation. D.C.Code 1981, § 5–424(g)(3).

5. **Zoning and Planning ⇐509**

In determining whether "practical difficulties" precluded grant of zoning variance permitting parking space that did not comply with minimum length requirement next to carriage house that owner wished to convert to single family residence, board of zoning adjustment was required to determine whether locating parking space within structure of carriage house was feasible and whether such alternative was, under circumstances, itself a practical difficulty. D.C.Code 1981, § 5–424(g)(3).

6. **Zoning and Planning ⇐540**

Substantial evidence supported board of zoning adjustment's determination that there would be no harm to public good if owners of carriage house were allowed to have variance from minimum parking space requirements, despite claim that occupant of carriage house would not park in such space and exacerbate serious parking problem in the neighborhood by parking on the street.

Richard Halberstein, for petitioners.

Frederick D. Cooke, Jr., Corp. Counsel at the time the brief was filed, Charles L. Reischel, Deputy Corp. Counsel, Washington, D.C., and Martin B. White, Asst. Corp. Counsel, Chevy Chase, Md., were on the Memorandum in Lieu of Brief, for respondent.

Aurelius K. Wilson, with whom Leonard L. McCants, Silver Spring, Md. was on the brief, for intervenor.

Before ROGERS, Chief Judge, and BELSON, Associate Judge, and MACK, Senior Judge.*

BELSON, Associate Judge:

* Judge MACK was an Associate Judge of the court at the time of argument. She became a Senior Judge December 1, 1989.

Petitioners [1] challenge an order of the respondent District of Columbia Board of Zoning Adjustment ("BZA" or the "Board") granting an application for an area variance to David C. Barnes and Janet B. Barnes to permit a decrease in length by one foot in a proposed parking space and to permit parking in the front rather than in the rear of the Barnes' property. These variances would enable Mr. and Mrs. Barnes to convert their two-story brick carriage house into a single-family residence while complying with the requirement that a parking space accompany each single-family residence.[2] Although we are unpersuaded by petitioners' challenges to BZA's order on the issues of uniqueness and lack of harm to the public good, we conclude that BZA's findings are insufficient to support its conclusion that the applicants would suffer practical difficulties if made to comply with the zoning regulations pertaining to parking for single-family dwellings. We therefore remand this case to BZA for further proceedings.

Intervenor, David C. Barnes ("Barnes" or "intervenor"), with his wife Janet B. Barnes, owns the subject property located just to the rear of 303 12th St., S.E., lot 814 within square 991 located within an R–4 district.[3] The subject lot is bounded on the east by petitioners Gilmartin and McCarthy's property and on the west by a public alley. It is improved with a two-story brick carriage house currently used for storage. Square 991 is bounded to the north by South Carolina Avenue to the south by D Street, to the east by 12th Street and to the west by 11th Street. The only direct means of access to the lot is via the public alleys, as there is no frontage on any public street. Both Gilmartin's and McCarthy's lots are beneficiaries of easements across the subject lot to the south (or rear) of the carriage house so as to provide access to the alley.

Barnes is seeking variances from the zoning ordinances in order to convert the carriage house into a single-family residence. In his initial application to BZA, Barnes sought a variance from the prohibitions against converting an existing garage into a residence when located on an alley less than thirty feet wide. Barnes' initial application provided for two parking spaces on the lot, one to the north of the carriage house and one to the south, so as not to exacerbate local parking congestion. While the proposed parking space on the south of the carriage house was regulation-size, the proposed north parking space was smaller, measuring nine feet by eighteen feet. A regulation-size parking space is nine feet by nineteen feet. 11 DCMR § 2115.1 (1987). The Board approved Barnes' initial application despite petitioners' contentions that the south parking space would interfere with their easements. In order to avoid impeding the use of easements on the south side of the carriage house, Barnes sought to delete the south parking space from his application for a variance. BZA ruled, however, that a new application was required. This second application, the subject of this appeal, sought two specific variances: (1) from ordinance § 2115.1 requiring parking spaces to be a minimum of nine feet wide and nineteen feet long; and (2) from ordinance § 2116.2 providing that parking spaces may only be located in "rear" or "side" yards of residential lots (the Zoning Administrator ruled that the area to the north of the carriage house is the front).

After a hearing at which petitioners and other neighbors opposed the requested variance, BZA granted Barnes' variance appli-

1. Petitioners are William Gilmartin, Donald S. Good and John McCarthy. Petitioners own property fronting on 12th Street, S.E. in the 300 block.

2. 11 DCMR § 2101.1 (1987) requires the provision of a parking space with each dwelling unit for one-family dwellings.

3. An R–4 district consists of "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 (1987).

cation on October 7, 1987.[4] Petitioners then sought review of BZA's order in this court.

This court's standard for reviewing orders of BZA is well-settled: "we must determine: (1) whether the agency has made a finding of fact on each material contested issue of fact; (2) whether substantial evidence of record supports each finding; and (3) whether conclusions legally sufficient to support the decision flow rationally from the findings." *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 746 (D.C.1990) (citing cases). *See also* D.C.Code § 1–1509(e) (1987 Repl.). "Generalized, conclusory or incomplete findings are insufficient; subsidiary findings of basic fact on all material issues must support the end result in a discernible manner." *Levy, supra*, 570 A.2d at 746. "If the agency makes no finding of fact on a material contested issue, this court on review may not 'fill in the gap by making its own determinations from the record,' but must remand the case." *Id.* (citations omitted). This court will defer to the Board's interpretation of its own regulations so long as its interpretation is consistent with the regulations and not "plainly erroneous." *Id.* We apply these standards of review to the issues before the court in this case.

Intervenor sought variances pursuant to D.C.Code § 5–424(g)(3) (1988 Repl.).[5] This court has enunciated the following three-part test, each part of which the applicant for the variance has the burden of satisfying before BZA may grant a variance:

> An applicant must show, first, that the property is unique because of some physical aspect or "other extraordinary or exceptional situation or condition" inherent in the property; second, that strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant; and third, that granting the variance will do no harm to the public good or to the zone plan.

Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 939, 941 (D.C.1987) (*Capitol Hill II*).

Petitioners contend that Barnes has failed to satisfy any of these three criteria and that BZA erred in concluding that he had met them. We will address, in turn, each of the three prongs of the test set forth in *Capitol Hill II, supra*, as they were applied by BZA.

[1] Petitioners contend that private encumbrances such as an easement or covenant, especially those in existence before adoption of the zone plan, may not satisfy the uniqueness test because such encumbrances are "commonly found to exist with regard to all types of properties, and in all different zoning districts." Petitioners misapprehend the uniqueness criteria. As explained in *Capitol Hill II, supra*, the

4. BZA concluded in part as follows:

> Sub-section 2115.1 of the Zoning Regulations requires that a parking space be a minimum of nine feet in width and 19 feet in length. The parking space proposed will be measured only 9 by 18 feet. Sub-section 2116.2 provides that parking may not be located in front yards of residential lots. The proposed parking will be located in the space determined by the Zoning Administrator to be the front yard of the lot.
>
> The Board concludes that the applicant has met the burden of proof. The site is affected by an extraordinary condition in that development and use of the site is restricted by an easement. If the easement did not exist, the subject variance would not have been requested. The required parking space cannot be located in the rear yard as originally proposed because of the location of the easement in that area.

5. D.C.Code § 5–424(g)(3) provides:

> 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 a specific piece of property, the strict application of any regulation adopted under §§ 5–413 to 5–432 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such 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....

See also 11 DCMR § 3107.2 (1987).

rationale behind the uniqueness test is that difficulties that are common to or affect an entire neighborhood, or a substantial portion thereof, are properly addressed by seeking amendment of the regulations themselves from the Zoning Commission. *Id.* at 942 (citing *Taylor v. District of Columbia Bd. of Zoning Adjustment*, 308 A.2d 230, 234 (D.C.1973)); *Myrick v. District of Columbia Bd. of Zoning Adjustment*, 577 A.2d 757, 760 (D.C.1990). If such problems were addressed through individual variances, the effect would be a *de facto* amendment of the zoning regulations by BZA because requests by other owners similarly situated would have to be granted as a matter of equal protection under the due process clause. *Capitol Hill II, supra*, 534 A.2d at 942. It is the Zoning Commission, however, not BZA that is empowered to make such amendments to the overall zone plan.

[2] The test follows from its rationale. To support a variance it is fundamental "that the difficulties or hardships [be] due to unique circumstances peculiar to the applicant's property and not to the general conditions in the neighborhood." *Palmer v. Bd. of Zoning Adjustment*, 287 A.2d 535, 539 (D.C.1972), *quoted in Myrick, supra*, 577 A.2d at 760. There is no requirement that the uniqueness "inheres in the land at issue...." *Capitol Hill II, supra*, 534 A.2d at 942. *See also Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091 (D.C.1979); *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C.1974). The statute does not preclude the approval of a variance where the uniqueness arises from a confluence of factors. The critical point is that the extraordinary or exceptional condition must affect a single property. *Capitol Hill II, supra*, 534 A.2d at 942. In this case the petitioners maintain that the exceptional condition is the general existence of easements. It is not, however, simply the existence of some unspecified easement that makes this property unique. What makes this property different from others is the fact that two specific easements cross the subject property in a particular fashion in relation to the improvement on the property so as to preclude the use of that portion of the property for a parking space. Thus, it is the unique confluence of the particular location of the carriage house in relation to the property boundaries on the north and the easements on the south that makes it necessary for the intervenors to seek the variances, as BZA found. This, in effect, makes the topography of the property unique. *Cf. Peterson v. Washington Court Athletic Club*, 28 Ohio App.3d 90, 92, 502 N.E.2d 252, 254 (Ohio Ct.App.1986) (unique topography of the land prevented construction of the pool in any place other than the side yard). While encumbrances by easement are likely to be common on a large number of properties in the neighborhood as well as in other neighborhoods, it seems unlikely that many properties would be affected in this particular way, so that these particular types of variances would be required for a large number of properties and, if granted, constitute a *de facto* amendment of the zone plan.

This court has decided a closely-related issue in a manner adverse to petitioners' position in *Monaco v. District of Columbia Board of Zoning Adjustment, supra*, 407 A.2d 1091. There we held that private restrictive covenants "may be considered in their own right as an extraordinary condition of a particular piece of property...." *Id.* at 1099 (citing *Capitol Hill Restoration Society v. Zoning Commission*, 380 A.2d 174, 184–185 (D.C.1977) (*Capitol Hill I*)). We see no reason to distinguish between the covenants at issue in *Monaco* and the easements at issue in the case at bar. Consequently, we conclude that the Board's finding of uniqueness based on the existence of the easements across Barnes' "rear" yard is supported by substantial evidence in the record and is neither arbitrary nor capricious.

[3] Petitioners also contend that BZA's authority to grant variance relief for exceptional or extraordinary conditions is limited to conditions brought about after adoption of the zoning regulations on March 12, 1958. The lot and carriage house were created prior to 1900 whereas the ease-

ments providing adjacent property owners "free and uninterrupted use, liberty and privilege of and passage in, over and along" the rear of the property were in place before 1920. Petitioners cite *De Azcarate v. District of Columbia Board of Zoning Adjustment*, 388 A.2d 1233, 1236 (D.C.1978), in support of their position. *De Azcarate*, however, does not purport to limit BZA's authority to grant variances to situations in which the exceptional conditions resulted from actions taken after adoption of the zoning regulations. Rather, the particular conditions in that case occurred after adoption of the zoning regulations. Our language in *De Azcarate*, *supra*, 388 A.2d at 1236, reveals that the court was simply addressing itself to the facts posed in the case before it. The court did not affirmatively hold that conditions existing before adoption of the regulations would not suffice as the basis for a variance.

In addition, the express wording of the statute does not limit the circumstances or conditions that can provide a basis for a variance to those that came about subsequent to adoption of the zoning regulations. The statute merely refers to "other extraordinary or exceptional situation [sic] or condition of a specific piece of property...." D.C.Code § 5–424(g)(3) (1988 Repl.). This is especially significant in view of the statute's specificity as to physical aspects of the property requiring that they exist "at the time of the original adoption of the regulations...." *Id.* Moreover, this court has held that prior knowledge or constructive knowledge or that the difficulty or hardship is self-imposed is not a bar to an area variance, the type of variance with which we are concerned in the instant case. *See A.L.W. v. District of Columbia Board of Zoning Adjustment*, 338 A.2d 428, 431 (D.C.1975). In *Taylor v. District of Columbia Board of Zoning Adjustment*, 308 A.2d 230 (D.C.1973), it was held that such knowledge or self-imposition of the hardship would ordinarily bar a use variance. *Taylor*, however, has been limited to requests for use variances, and has not been applied to applications for area variances. *See A.L.W.*, *supra*, 338 A.2d at 431.

To the contrary, consideration of *Capitol Hill II*, *supra*, in conjunction with *Clerics of St. Viator, Inc. v. District of Columbia Board of Zoning Adjustment*, *supra*, *Taylor*, *supra*, and *De Azcarate*, *supra*, indicates that circumstances occurring before adoption of the zoning regulations may satisfy the statute. In *Capitol Hill II* we stated, "the extraordinary or exceptional conditions which justify a finding of uniqueness can be caused by subsequent events...." *Capitol Hill II*, *supra*, 534 A.2d at 942, citing *De Azcarate*, *supra*, 388 A.2d at 1237. The use of the word "can" implies that we viewed *De Azcarate* as extending the circumstances in which BZA could grant a variance from only those conditions that predated the promulgation of the 1958 zoning regulations to conditions that came into being after their promulgation. Indeed, this is the most reasonable reading of the statute.

[4] Today we make explicit what was implicit in our previous opinions that certain "other extraordinary or exceptional stituation [sic] or condition of a specific piece of property" as stated in § 5–424(g)(3) need not have preceded the promulgation of the zoning regulation. This is the interpretation adopted by BZA, it seems explicit in the statute, and we can discern no reason to reject this interpretation in the instant case. Consequently, BZA's decision to consider these easements merits our approval.

[5] Turning to "practical difficulties," petitioners argue that the only such difficulties suffered by intervenor in complying with the applicable zoning regulations for parking for single-family residences would be the economic cost of having to park within the interior of the residence rather than in a non-conforming space outside in the yard. Upon review of the record we conclude that the findings of BZA are insufficient to support the conclusion that intervenor would suffer "practical difficulties" in complying with the requisite zoning regulations pertaining to parking, and that BZA failed to make findings on all material contested issues of fact.

The seminal case in this jurisdiction on this issue is *Palmer v. Board of Zoning Adjustment, supra.* In *Palmer* this court held that because of the nature of the respective types of variances and their effects on the zone plan, the higher "undue hardship" standard applies to requests for use variances while the lower "practical difficulty" standard applies to area variances. *Id.* at 540–41. *Palmer* did not establish a precise definition of what constitutes "practical difficulties." *Id.* at 542. The court merely set forth a general standard that the applicant must show that strict compliance would be "unnecessarily burdensome," leaving specific questions regarding the nature and extent of burden to a case-by-case analysis. *Id.* The court did state, however, that "it is certain that a variance cannot be granted where property conforming to the regulations will produce a reasonable income but, if not put to another use, will yield a greater return." *Id.* (footnote omitted). Although this statement was within the section of the opinion discussing area variances, it appears that it refers to the particular use of a property and thus the economic discussion is more appropriately confined to use variances. The *Palmer* test for determining "practical difficulties" for area variances has been further refined by our subsequent case law. In order to prove that an applicant suffers from "practical difficulties" two elements must be proven:

> The applicant must demonstrate that (1) "compliance with the area restriction would be unnecessarily burdensome ...", *A.L.W. Inc. v. District of Columbia Board of Zoning Adjustment*, D.C. App., 338 A.2d 428, 431 (1975); and (2) the practical difficulties are unique to the particular property. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C.1976).

Association for Preservation of 1700 Block of N Street, N.W., and Vicinity v. District of Columbia Bd. of Zoning Adjustment, 384 A.2d 674, 678 (D.C.1978) (*"1700 Block"*).

Economic use of property has been considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in variance cases that have used the *Palmer* analysis. In *Barbour v. District of Columbia Board of Zoning Adjustment, supra*, the court affirmed BZA's denial of an area variance application from certain side yard requirements in order to expand the size of the applicant's kitchen. The fact that alternative methods of expansion without necessitating the variance would cost fifty to ninety percent more, or that the other methods would reduce the interior living space or backyard space, was held insufficient to meet the burden imposed by the *Palmer* standard. *Id.* at 327. In *1700 Block, supra*, however, this court upheld BZA's grant of an area variance from off-street parking requirements to the YMCA. The difficulties in compliance were that recreational facilities would have to be reduced, including cutting the size of the swimming pool in half. Even if that were done, the cost of the parking spaces would still have been prohibitive. If the normal number of parking spaces were included, the YMCA would not have been able to provide all of its programs. In both *Barbour* and *1700 Block* the practical difficulties were ones of increased costs and reduced enjoyment of the property. Yet it was clear that in the latter the costs were far larger and the restrictions upon use were far greater. In *1700 Block*, moreover, there was no feasible alternative that would have complied with the regulations whereas in *Barbour*, there were different designs that would have been in compliance with the regulations, albeit with a consequent loss in back yard size or interior space in the rest of the house. *1700 Block, supra*, 384 A.2d at 678 n. 13.

Thus, *Barbour* suggests that a substantial increase in the cost of an intended improvement coupled with some loss in the overall utility of the property was not a practical difficulty that merited an area variance. *See also Myrick, supra*, 577 A.2d at 761–62 (cost of renovation of interior space insufficient to justify area variance where expansion of living space could be achieved in accordance with regulations). On the other hand, *1700 Block* indi-

cates that at some point economic harm becomes sufficient, at least when coupled with a significant limitation on the utility of the structure. It is for BZA, in the first instance, to weigh carefully the claims of potential difficulty advanced here in light of *Barbour, 1700 Block*, and other applicable precedents.

We repeat the observation we made in *Palmer, supra*, 287 A.2d at 542, 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." *See Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 942 (D.C.1979) (this court defers to BZA's determination of the practical difficulties so long as the requisite findings of fact are made).

BZA considers many factors in reaching a decision to grant or deny a variance. In *A.L.W., Inc. v. District of Columbia Board of Zoning Adjustment, supra*, the court considered the issue of whether an owner who knew or should have known of area restrictions should be granted an area variance. The court essentially held that prior knowledge or self-imposition of the difficulty did not bar granting an area variance. Rather, that fact was but one of many factors that BZA might consider in reaching its decision. *Id.* at 431–32 (citing *Ozolins v. Horn*, 26 A.D.2d 555, 270 N.Y.S.2d 1001, 1002–03 (1966)). As in *A.L.W.*, BZA may also consider a wide range of factors in determining whether there is an "unnecessary burden" or "practical difficulty." *See Monaco, supra*, 407 A.2d at 1097; *Clerics of St. Viator, supra*, 320 A.2d at 294. Increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration. *Barbour, supra*, 358 A.2d at 327.

It is possible that a factor underlying BZA's decision in the instant case was that the requested variances were *de minimis* in nature.[6] The one foot difference in the size of the parking space is almost negligible, especially where, as here, the Board determined that the grant of the variance would not harm the public. The prohibition on parking in "front yards" seems more likely to have been aimed at lots such as petitioners' that front directly onto public streets than at lots along an alley, like intervenor's. In this case, because the lot is completely enclosed within other lots and a public area, the distinction between the "front" and "rear" yards appears at least negligible, if not irrelevant.

In order for BZA to deal with circumstances such as those presented in the application for variances in this case, BZA has the flexibility to consider a number of factors including, but not limited to: 1) the weight of the burden of strict compliance; 2) the severity of the variance(s) requested; and 3) the effect the proposed variance(s) would have on the overall zone plan. Although BZA's consideration of such factors seems to flow implicitly from its conclusion that a failure to grant the variances would result in "practical difficulties" for the intervenor, and it is likely that BZA considered it significant that the specific variances requested were slight and would not harm the overall zone plan, we must require more specific findings as to what practical difficulties BZA identified.

The Board also failed to make the requisite findings concerning each contested is-

6. This court may not substitute its reasoning for BZA's when that reasoning appears to be lacking in its order. *See, e.g., Levy v. District of Columbia Bd. of Zoning Adjustment, supra*, 570 A.2d at 753 ("A court may not supply a rationale for the agency decision by conjecture from what it did."). "[O]ur function is to 'assure that the agency has given full and reasoned consideration to all material facts and issues. The court can only perform that function when the agency discloses the basis of its order by an articulation with reasonable clarity of its reasons for the decision.'" *Id.* (quoting *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, 293 A.2d 470, 473 (D.C.1972), *aff'd on remand*, 320 A.2d 282 (D.C.1974)). On remand BZA may consider whether the variance sought is *de minimis* in nature and whether for that reason a correspondingly lesser burden of proof rests on the intervenor. *See* 3 R.M. Anderson, American Law of Zoning, § 2051 at 534 (1986 ed.); *Stewart v. Zoning Hearing Bd. of Radnor Township*, 110 Pa.Cmwlth. 111, 531 A.2d 1180, 1182 (1987) ("infinitesimal deviation [lot a few feet short of one acre] from complete compliance is clearly within the de minimis exception for granting dimensional variances.").

sue of material fact. *See Draude v. District of Columbia Bd. of Zoning Adjustment*, 527 A.2d 1242, 1251 (D.C.1987). BZA failed to address the feasibility of locating the parking space (or part of it) within the structure of the carriage house in order to comply with zoning regulations, or whether such an alternative was in the circumstances of the instant case itself a practical difficulty.[7] Accordingly, we remand this case to BZA for more thorough findings on "practical difficulties" consistent with the views expressed in this opinion.

[6] Turning to the matter of the public good, we note that the basic harm asserted by petitioners is that conversion of the carriage house to a residence with two bedrooms and two full baths is likely to result in the addition of more than one car to the neighborhood. Petitioners contend that this will exacerbate an already serious parking problem in the neighborhood. Petitioners argue that if the only space is on the north side of the carriage house, the difficulty of getting into that space will cause the resident to park on the street or, if not, to congest the alley area unduly and impede the provision of municipal services such as trash collection. Intervenor, on the other hand, contends that it is unlikely that someone with a space right next to the house would park out on the congested street where parking is scarce, especially at night when walking through the alley might be dangerous.

This issue presents a particularly fact-based question more appropriately resolved by BZA. The Board explicitly found that an "occupant of the carriage house is most likely to park in the front yard of the site." There is evidence in the record on both sides of the issue, and the evidence in Barnes' favor is more than just his testimony. Petitioners themselves provided substantial evidence in Barnes' favor during cross-examination. Given the deference that we owe BZA, particularly on factual issues, we are satisfied that substantial evidence supports BZA's conclusion that there is no harm to the public good or the zone plan. The Board's conclusion is amply supported by the record. It flows rationally from its findings of fact. Consequently, we conclude that BZA's order finding that no public harm would result from granting the variances is supported by substantial evidence in the record and is neither arbitrary nor capricious.[8]

In view of the foregoing, this case will be remanded to BZA for further consideration, and the entry of appropriate findings on the issue of practical difficulties.

It is so ordered.

7. Barnes made only broad conclusory statements to the Board during the hearing to the effect that "the whole reason that I don't want to park inside" is because the property is more valuable to him with outside parking. Barnes provided no documentation to BZA as to what the economic or other loss to him would be if he parked inside rather than out. This court cannot consider for the first time on appeal figures listed in intervenor's brief at 15 n. 4 as to the extent of possible losses due to interior parking in the carriage house. In remanding this case to BZA for further proceedings, BZA may seek additional evidence on this issue to support any findings on practical difficulty.

8. As to petitioners' contention that BZA's ruling in this case conflicts with their prior ruling in Barnes' initial application, case 14491, that the easements are not relevant, the record in that prior case is not before the court and thus we do not consider it here.



Claude Steve DAVID, Jr., Appellant,

v.

UNITED STATES, Appellee.

No. 89-676.

District of Columbia Court of Appeals.

Argued May 30, 1990.
Decided Aug. 31, 1990.

Defendant was convicted on guilty plea to single count of second-degree mur-