GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17398 of Jason Lefebure, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under § 1321.2, and a variance from the size of parking space requirements of § 2115.1, to allow the renovation of, and a third floor addition to, an existing building for commercial use in the HS/C-2-A District at premise 510 H Street, N.E. (Square 832, Lot 14).[1]

HEARING DATE: December 6, 2005
DECISION DATE: December 6, 2005

DECISION AND ORDER

This application was submitted on July 15, 2005 by Jason Lefebure ("Applicant"), owner of the property that is the subject of the application ("subject property"). The application requests variances from the floor-area ratio ("FAR") requirement and the size of parking space requirement in order to construct an addition to the existing building, add a rear exit stair, and provide two under-size parking spaces. The building will not exceed the maximum FAR permitted in its C-2-A zone district, but will exceed the proportion of nonresidential FAR permitted both under the regulations governing the C-2-A district and the new provisions of the H Street, N.E. Neighborhood Commercial Overlay District ("Overlay"), which was set down by the Zoning Commission on October 25, 2004 and which became effective upon its publication in the *D.C. Register* on March 10, 2006. Once the Commission decided to set down the Overlay for a hearing, all building permit applications for properties located within the proposed Overlay had to be processed in accordance with the more restrictive proposed provision, as is required by 11 DCMR § 3202.5 (a).

The Board held and concluded a hearing on the application on December 6, 2005, and, at the close of the hearing, voted 4-0-1 to grant the application. No Zoning Commissioner member was present at the hearing.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated July 19, 2005, the Office of Zoning ("OZ") gave notice of the application to OP, the District of Columbia Department of Transportation, Advisory Neighborhood Commission ("ANC") 6C, the ANC within which the subject property is located, Single Member District 6C05, and the Council Member for Ward 6.

[1]The caption is different from that advertised. The relief requested changed during the course of the proceedings on the application and the caption has been revised to reflect the proper relief.

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Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register* and mailed notice of the hearing to the Applicants, ANC 6C, and all owners of property within 200 feet of the subject property.

Requests for Party Status. There were no requests for party status.

Applicant's Case. The Applicant's architect presented the case. He testified to the narrowness of the subject property and the resultant practical difficulties in providing the required residential use. He also described the design of the project and opined that it would have a positive impact on the H Street Commercial Corridor.

Government Reports. The Office of Planning submitted a report to the Board dated November 21, 2005. OP opined that the Applicant met the variance tests and recommended approval of the variances requested. OP did not feel that granting the variances would have a detrimental effect on the Overlay.

ANC Report. ANC 6C submitted a report to the Board dated November 30, 2005, which recommended denial of the variances requested because, according to the ANC's analysis, the Applicant failed to satisfy the variance tests. The ANC also stated that the Applicant would not experience difficulties if the variances were not granted, and that granting them would set a bad precedent in the new Overlay corridor.

Persons in Support or Opposition. The Capitol Hill Restoration Society submitted a November 10, 2005 letter to the Board opposing the granting of the variances. The Society opined that the subject property is not unique and can be put to sufficient economic use within the existing zoning parameters.

The H Street Development Corporation submitted a November 2, 2005 letter to the Board supporting the granting of the requested variances. The Development Corporation views the granting of this application as an opportunity to renovate an "eyesore" and improve the H Street, N.E. commercial corridor.

FINDINGS OF FACT

The subject property and the surrounding area.

1. The subject property is located within the H Street commercial corridor, at 510 H Street, N.E., Square 832, Lot 14, in an HS/C-2-A zone district.

2. The lot is 19 feet wide and 1,660 square feet in area, but is not a perfect rectangle. It has a reduced rear yard area because a corner "chunk" of approximately 8 feet by 5 feet is cut out of the lot and is a part of the public alley at the rear.

3. The subject property is improved with a two-story building with a basement. The two buildings adjacent to the subject building on one side are both three stories tall.

4. The building itself is 1,145 square feet in area and occupies approximately 75% of the lot area. The building is 17 feet, 9 inches wide and 66 feet long.

5. In the past, the building was used for commercial and possibly residential purposes. The basement has been used for storage, the first floor for a grocery store/billiard parlor, and the second floor either for a residence or a commercial use.

6. The building has been vacant for several years and is in need of renovation and repairs.

The proposed project.

7. The Applicant is proposing to renovate the existing building and to add a new third floor and mezzanine with a roof deck, as well as a new enclosed rear stairway. The roof deck will not be visible from the street.

8. The height of the building as proposed will be approximately 46 feet, 4 feet less than the maximum 50 feet permitted in the C-2-A zone district. 11 DCMR § 770.1.

9. The Applicant will provide two parking spaces in the rear, opening onto a rear alley, both of which will measure 8 feet by 16 feet,[2] smaller than the 9 feet by 19 feet required for a standard parking space. 11 DCMR § 2115.1.

10. The C-2-A zone district permits an overall maximum FAR of 2.5, with a maximum nonresidential FAR of 1.5. 11 DCMR § 771.2.

11. The subject property is located within the Housing Sub-District of the H Street Overlay, which permits a maximum FAR of 0.5 for nonresidential uses, unless an existing façade is preserved. 11 DCMR § 1321.2.

12. The Applicant will preserve the façade, indeed, the entire building, and so is permitted, under the Overlay, a maximum of 1.5 for nonresidential uses. 11 DCMR § 1321.3.

13. The Applicant is proposing to use the basement of the building for storage for a first floor retail tenant and to use the second floor and the newly-constructed third floor and mezzanine for office space for his graphic design business and studio.

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[2]In his testimony, the Applicant's architect stated that the 2 parking spaces provided would likely be 9 feet by 18 feet, even closer to the required size. (December 6, 2005 Transcript at 10.)

14. The Applicant's proposed total FAR of 2.5 will not exceed the maximum FAR allowed, but will all be devoted to nonresidential uses, thereby exceeding the maximum nonresidential FAR allowed.

The Variance Test.

15. The subject building was built prior to the enactment of the Zoning Regulations and is small both in terms of length and width to allow for a residential use above a commercial use.

16. The building is long, but narrow, with limited direct sunlight from the front and back windows. It is attached to adjacent buildings on both sides, and therefore the width of its footprint cannot be expanded.

17. In order to locate residential uses on the second and third floors, two entries are required from the street, one for the first floor commercial occupancy and one for the upper residential uses. Such a multi-tenant residential use would require a 2-hour rated corridor at the stair.

18. The necessary second stair and attendant corridor circulation space would use up approximately 15% of the total gross floor area of the building, leaving an-overly narrow usable space of approximately 7 feet by 28 feet.

19. If the entire building is devoted to nonresidential uses, a second entry and its attendant stair and corridor are not required, leaving a suitably-sized usable space for the nonresidential uses.

20. A sufficient rear yard is provided, but there is insufficient room for two 9 by 19-foot parking spaces and there is nowhere else on the lot that such spaces can be located.

21. Both the retail and the office uses are permitted in the underlying C-2-A zone and in the Housing Sub-District of the Overlay.

22. The Applicant's business/office use will employ 10 people, most of whom will be using mass transit, walking, or bicycling to work.

23. Commercial vehicles, such as delivery trucks, will make limited stops at the subject property and the office use will not create any significant noise of other negative impacts on the surrounding area.

24. The absence of residential uses in the building will not have a detrimental effect on the H Street corridor. The first-floor retail will provide a lively street presence and will continue the string of first-floor retail along both sides of H Street. The upper-

floor office space will provide additional activity in the building and the area during work hours.

CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any Zoning Regulation would "result in particular and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property ..." D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2. The "exceptional situation or condition" of a property can arise out of the structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board of Zoning Adjustment,* 320 A.2d 291, 293-294 (D.C. 1974). Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3101.2.

An applicant for an area variance must make the lesser showing of "practical difficulties," as opposed to the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment,* 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case, therefore, had to make three showings: exceptional condition of the property, that such exceptional condition results in "practical difficulties" to the Applicant, and that the granting of the variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The subject property whose lot and building pre-date the Zoning Regulations is exceptionally long and narrow and the building is bounded on both sides by party walls and adjacent buildings. One rear corner of what would otherwise be a rectangular lot is infringed upon by the rear alley. These exceptional circumstances lead to Applicant's difficulty in providing the required residential use.

The Applicant is constrained by the narrowness of the building in providing an upper-story residential component. If the required second entry and attendant stair and corridor were provided, there would not be adequate room left for a usable residential unit(s). If permitted to instead use the two upper floors and mezzanine as office space, no second entry, stair, or corridor are necessary, and the area left is sufficient to be used for this office space.

As for the size of the parking spaces, two 9 by 19-foot required spaces simply cannot fit in the building's rear yard. The size of the spaces provided is only slightly smaller than that required, and even at 8 feet by 16 feet, is sufficient to accommodate compact cars. (*See,* 11 DCMR § 2115.3). The Board concludes that the parking spaces are certainly large enough to be usable and that their provision furthers the public good by opening up 2 on-street parking spaces.

The last prong of the variance test is no impairment of the public good or of the intent or integrity of the Zone Plan and Regulations. With respect to the FAR variance, the Board finds none of these negatives here, and in fact, finds the opposite. The retail and office uses proposed by the Applicant are both permitted in the underlying C-2-A zone and in the Overlay, albeit at a somewhat reduced FAR than is proposed. Therefore the uses proposed are compatible with the surrounding area. Moreover, although the Applicant's proposal does not provide residential uses, it does further several of the goals of the H Street Overlay. Instead of razing the building, the proposal makes adaptive re-use of it, retains its façade, and improves it with a new addition. *See,* 11 DCMR §§ 1320.2(e) and 1321.3. (One of the purposes of the Overlay is to "[e]ncourage the reuse of existing buildings.") The proposal also furthers one of the main purposes of all Neighborhood Commercial Overlays by establishing a retail use on the first floor of the building. *See,* 11 DCMR § 1300.3(b). The re-use of the building will help to re-vitalize the H Street commercial corridor, thus enhancing the public good.

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

The ANC did not support the application on grounds that there did not appear to be evidence that the property was unique or exceptional or that the applicant would experience a practical difficulty if the variance were not granted. As set forth above, the Board finds that the property is exceptionally narrow and that this exceptional condition results in the difficulty of accommodating a residential use.,. The ANC further stated that this exception would "set a poor precedent in this commercial corridor that is beginning to see development." It is unclear as to what kind of precedent the ANC was referring. However, each case must be judged on its individual merits and each application must independently meet the tests required. Given that this property meets the variance tests and is in accord with the several goals of the H Street Overlay, the Board does not find the ANC's argument persuasive.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a variance from the FAR requirements of § 1321.2, and a variance from the size of parking space requirements of § 2115.1. Accordingly, it is therefore **ORDERED** that the application be **GRANTED.**

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT.
Each concurring Board member approved the issuance of this order.

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

FINAL DATE OF ORDER: JUN 08 2006

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE

DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.