GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 18312 of Rashid Salem, pursuant to 11 DCMR § 3103.2, for a variance from the lot area requirements under § 401.3, to allow a conversion of a one-family dwelling into a four-unit apartment house in the R-4 District at premises 1341 Irving Street, N.W. (Square 2848, Lot 815).[1]

HEARING DATE: February 14, 2012
DECISION DATE: March 13, 2012

DECISION AND ORDER

This self-certified application was submitted October 3, 2011 by Rashid Salem ("Applicant"), the owner of the property that is the subject of the application. The application was filed pursuant to 11 DCMR § 3103.2 for an area variance from the minimum lot area requirement under § 401.3 to allow a conversion of a one-family dwelling into a four-unit apartment house in the R-4 District at premises 1341 Irving Street, N.W. (Square 2848, Lot 815). Following a public hearing, the Board of Zoning Adjustment (the "Board") voted 4-1 on March 13, 2012 to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated October 6, 2011, the Office of Zoning sent notice of the application to the Office of Planning ("OP"); the District Department of Transportation; the Councilmember for Ward 2; Advisory Neighborhood Commission ("ANC") 1A, the ANC for the area within which the subject property is located; and the single-member district ANC 1A06.

A public hearing was scheduled for February 14, 2012. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on November 11, 2011, mailed notice of the hearing to the Applicant, the

[1] In addition to the § 401.3 relief, the application originally sought a variance from the lot occupancy requirement of § 403 to construct rear balconies on all three floors. The Applicant withdrew the lot occupancy request in its pre-hearing statement filed on January 3, 2012, and provided revised plans without the balconies.

owners of property within 200 feet of the subject property, and ANC 1A. Notice was published in the *D.C. Register* on November 11, 2011. (58 DCR 9509.)

Requests for Party Status. In addition to the Applicant, ANC 1A was automatically a party in this proceeding. There were no additional requests for party status.

Applicant's Case. The Applicant provided testimony and evidence from Rashid Salem, the Applicant and owner of the subject property; Tim Chamberlain, owner of Kealee Construction, LLC, the contractor for the reconstruction/addition project; Janet Bloomberg of Kube Architecture, the project architect; and Barrett Evans, a real estate agent and developer, and a resident of the Columbia Heights neighborhood.

Government Reports. By report dated February 7, 2012 and through testimony at the public hearing, OP recommended denial of the requested variance. According to OP, "Although the building is exceptional in its state of disrepair, that condition does not appear to lead to a practical difficulty for the applicant." OP also testified in its report that the relief would be a detriment to the public good because the conversion "would diminish the availability of family-sized housing stock in the area." OP also stated that the relief would impair the intent of the Zoning Regulations.

ANC Report. By Form 129 – Advisory Neighborhood Commission (ANC) Report, including an attachment, filed with the Office of Zoning on February 29, 2012, ANC 1A indicated that, at a regular, duly noticed monthly public meeting held on January 11, 2012 with a quorum present, the ANC voted 8-1-1 to recommend that the Board approve the application with the condition that the Board limit the approval to three units, rather than four units. This letter noted that the four-unit scenario prompted concerns about parking from some commissioners.

Persons in Opposition. The Board heard testimony from two persons in opposition to the application, including Steve Greenwood of 1317 Irving Street, N.W., and Andrew Krieger of 1309 Irving Street, N.W. The Board received a letter in opposition signed by various neighbors, as well as several letters of support from neighbors, including the two neighbors immediately adjacent to the subject property.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 1341 Irving Street, N.W., Square 2848, Lot 815.

2. Lot 815 is a rectangular shaped interior lot with a land area of 2,471.58 square feet. The lot is approximately 16.67 feet wide and 148.265 feet long.

3. The subject property is located in the R-4 Zone District.

4. The subject property is improved with a three-story row dwelling with one below-ground level.

5. The structure was originally constructed around 1910, and a two-story addition was added to the rear of the existing building in the early 1950's.

6. The subject property currently contains one parking space.

7. The 1300 block of Irving Street, N.W. is comprised almost exclusively of row dwelling structures consisting of one-family dwellings, flats, and converted apartment houses.

8. The subject property is located approximately 360 feet from the Columbia Heights Metrorail Station on the corner of 14th and Irving Streets, N.W.

The Applicant's Project

9. The Applicant proposes to construct a three-story addition to the rear of the structure on the subject property and to restore and renovate the exterior and interior of the remaining existing structure. In the process, the Applicant intends to convert the structure into a four-unit apartment house with one living unit on each level.

10. A conversion to an apartment house is permitted in the R-4 zone district, pursuant to § 330.5(e), subject to §§ 401.3 and 403.2.

11. Subsection 401.3 requires a minimum land area requirement of 900 square feet for each unit, while § 403.2 requires a maximum lot occupancy of the greater of (i) 60% or (ii) the existing lot occupancy as of the date of conversion.

12. Although the project does not exceed the lot occupancy limit, it will not comply with the land area requirement. The subject property consists of 2,471.58 square feet of land. With four apartment units, the land area provided by the subject property is approximately 617.9 square feet per apartment unit.

13. The completed project will continue to provide one legal parking space and will also provide an adjacent compact parking space as a "limited common element" available for purchase by one of the eventual condominium unit owners.

The Exceptional Condition of the Subject Property

14. Prior to acquisition by the Applicant, the subject property was vacant for approximately 15 years.

15. A previous owner of the property was in partnership with a developer who partially demolished the interior of the building, and then abandoned the project.

16. The structure is now only a gutted shell with walls and a roof and, as detailed below, is in a state of disrepair.

17. The Board credits the findings contained in the report of the Applicant's structural engineer, Steven D. Goughnour, P.E., of Goughnour Engineering, PC, that (i) the floor joists over the crawl space at the rear of the house were severely rotted and several were cracked and buckled, (ii) the wood header supporting the rear wall of the upper two levels is severely rotted and cracked, (iii) the wood joists supporting the low roof at the rear of the building are rotted and are cracked and buckled, (iv) the wood roof sheathing for the high roof as water stains, the roof joists also appear to be stained and some of the joists appear to have rot, (v) the two story wall at the side of the west side of the rear portion of the house is cracked and has shifted, and (vi) the rear wall of the upper levels is cracked and shifting around windows.

18. Mr. Goughnour's professional recommendation was to demolish the two-story rear section of the structure as well as the rear wall of the remaining three-story portion of the building (which the Applicant noted he had already done by the time of this hearing). Tim Chamberlain, owner of Kealee Construction, and general contractor for this project, agreed with this analysis.

19. In order to replace the two-story rear section of the building, the new addition must be constructed to the lot line thereby removing the nonconforming closed court. This resulted in significant additional expense to relocate the structure's existing footprint and foundation.

20. In addition, every other significant aspect of the structure needed to be replaced, including all plumbing, HVAC, electrical, windows, floor joists, and roof.

The Exceptional Condition Results in a Practical Difficulty

21. The additional expense to restore the subject building, caused by the building's extraordinary state of disrepair, was such that restoring the structure as anything less than four apartment units was not an economically viable option, after considering probable market values for the finished product.

22. The Board accepts the conclusion of comparative market analysis evidence submitted by the Applicant that the average price *per square foot* for condominium units in this section of the city was markedly lower for units larger than 2,000 square feet than it was for units of less than 1,600 square feet.

23. Based on those projected market values, the Board finds that, as a result of extraordinary cost to restore the subject building, the development of the subject property as anything less than

proposed unit, the applicant needs a variance from the minimum lot restrictions under 11 DCMR § 401.3 to allow the conversion of the subject building to a four-unit apartment house.

The Board concludes that the Application satisfies the requirements necessary for variance relief, as follows:

The Board concludes that the condition and the circumstances surrounding the subject property constitute an exceptional condition and situation. The building has been blighted and vacant for 15 years, is in a state of severe dilapidation and suffers from structural integrity to such a degree that a structural engineer recommended that the owner demolish the rear portion of the structure and the rear wall of the remaining portion of the structure.

The Board concludes that complying with the Zoning Regulations by restoring the building as anything less than a four-unit residential building would impose an unnecessary burden upon the owner as a result of the extraordinary additional expense necessary to restore the subject building back to productive and sustainable use. Based on the building's extreme state of disrepair and the expense required to restore the building, developing anything less than a four-unit apartment house in this case would not be economically viable and would put the property in danger of remaining idle. Preventing usable land from remaining idle is one of the primary reasons for providing variance relief. Variances from the strict application of the Zoning are "designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an unjust invasion of property rights and prevent usable land from remaining idle." *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535,541 (D.C. 1972).

The Board further finds that variance relief can be granted to this applicant without substantial detriment to the public good or the integrity of the zone plan.

As to the integrity of the zone plan, the OP noted that delivering housing comports with the District's high-priority objective of increasing the number of residents in the District. Moreover, the project conforms to the Comprehensive Plan for Ward 1, which encourages development near Metrorail stations and neighborhood stabilization. Lastly, the R-4 Zone typically contains moderately dense neighborhoods, which frequently contain smaller apartment units.

As to whether the grant of the variance will result in substantial detriment to the public good, the Board notes that the Applicant has agreed to restrict the building's occupants from participating in the permit parking program described at 18 DCMR § 2411. Program participants are issued stickers that exempt their vehicles from the parking restrictions applicable to neighborhood streets protected by the program. As a result of the condition, the building's occupants will not compete for curbside parking. The Board does not share OP's concern that granting the variance would diminish the availability of family sized housing stock in the area. OP's view mostly stems from its belief that this property could be successfully rehabilitated with fewer and therefore larger units. For reasons stated earlier, the Board does not consider that to be a viable

option. Thus, denying the variance would not preserve family-sized housing stock, but prevent the addition of new and needed housing in this area.

Great Weight

Section 13(b)(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Code § 1-309.10(d)(A)), requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case the ANC 1A's opposed the granting of four units, but supported a three-unit conversion. One of the primary concerns with the four-unit configuration was parking. Because the Applicant has agreed to fully restrict the eventual condominium owners' right to participate in the District's Residential Permit Parking program, and also because of the property's location very near a Metrorail station, the Board believes that the parking concerns have been addressed. For this reason, and because the Applicant met the elements for granting a variance for a four-unit conversion, the Board does not find the ANC's advice persuasive.

The Board is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Code § 6-623.04) to give great weight to OP's recommendations. While OP found that the property was subject to an exceptional condition, it found no practical difficult resulted and that the grant of the variance would substantially harm the integrity of the zone plan and the public good. For the reasons explained in its discussion of these elements, the Board disagrees.

For the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby **ORDERED** that the application is hereby **GRANTED, SUBJECT** to the approved plans as shown on Exhibit 31, and with the following **CONDITION:**

> The Applicant or his successor and assigns shall include within the Condominium Covenants a provision that restricts all unit owners from participating in the Residential Permit Parking program and shall adopt and record condominium covenants that memorialize that restriction prior to obtaining the first certificate of occupancy for the project.

VOTE: **4-1-0** (Meredith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, and Jeffrey L. Hinkle to Approve; Michael G. Turnbull to Deny)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: JUN 13 2012

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITION IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE 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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 18448 of 3579 Warder Street LLC, pursuant to 11 DCMR § 3103.2, for variances from the lot area requirement under § 401.3, lot occupancy requirement under § 403.2, and nonconforming structure requirements under § 2001.3 to allow the conversion of a rooming house into a four-unit apartment building in the R-4 District at premises 1221 Otis Place, N.W. (Square 2829, Lot 57).[1]

HEARING DATE: November 27, 2012
DECISION DATE: January 15, 2013

DECISION AND ORDER

This self-certified application was submitted on June 12, 2012 by 3579 Warder Street LLC (the "Applicant"), the owner of the property that is the subject of the application. The application, as amended, requests area variances from requirements pertaining to maximum lot occupancy under § 403.2, the enlargement of a nonconforming structure under § 2001.3, and minimum lot area under § 401.3 to allow the enlargement and conversion of a two-story, 11-bedroom rooming house to a three-story, four-unit apartment house in the R-4 District at 1221 Otis Place, N.W. (Square 2829, Lot 57). Following a public hearing, the Board of Zoning Adjustment ("Board") voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated August 1, 2012, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 1; Advisory Neighborhood Commission ("ANC") 1A, the ANC in which the subject property is located; and

[1] This self-certified application was amended at the public hearing to request variance relief from requirements pertaining to lot occupancy and the enlargement of a nonconforming structure, in addition to the variance from the lot area requirement initially requested. The Applicant requested the amendment after becoming aware of a mistaken calculation of lot occupancy in the initial application. The caption has been revised accordingly.

Single Member District/ANC 1A07. Pursuant to 11 DCMR § 3112.14, on September 17, 2012 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 1A, and the owners of all property within 200 feet of the subject property. Notice was also published in the *D.C. Register* on September 21, 2012 (59 DCR 10996).
Party Status. The Applicant and ANC 1A were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Elias Wolfberg, the owner and resident of a property abutting the Applicant's property to the west.

Applicant's Case. The Applicant provided evidence and testimony from Mohammed Pishvaeian, representing 3579 Warder Street LLC, and from the project architect, James Killette. The witnesses described the proposed project and asserted that the application satisfied all requirements for approval of the requested zoning relief. The Applicant submitted a "profit and loss analysis" in support of its contention that conversion to a three-unit apartment house, as suggested by OP, would not be financially feasible, in part due to the costs of renovating the property from its prior use as a rooming house.

Party in opposition. The party in opposition objected to the Applicant's proposal "to convert a single-family dwelling house, protected by and classified under R-4, into a three-story, four-unit condominium complex." (Exhibit 34.) The party in opposition asserted that the building at the subject property was no longer an 11-room rooming house, as the Applicant lacked both a certificate of occupancy and a business license to operate a rooming house. According to the party in opposition, the application did not satisfy the requirements for variance relief but was an attempt by the Applicant to maximize return on investment, and would create an apartment building, containing four units in three stories, that would be out of character with the surrounding neighborhood of predominantly two-story one- or two-family dwellings. The party in opposition also objected that the planned third story at the subject property would compromise the view from his property, and that approval of the requested zoning relief would encourage other property owners in the neighborhood to seek approval of additional units in their buildings, which would alter the current lower-density character of the neighborhood.

OP Report. By memorandum dated November 20, 2012, OP indicated its lack of support for variance relief that would allow the conversion of the Applicant's building, after enlargement, to a four-unit apartment house, although OP could potentially support conversion of the existing building into three apartments. According to OP, conversion to three units would be economically feasible and would require a smaller degree of variance relief and thus would be more consistent with the intent of the Zoning Regulations. The report further concluded that approval of the requested zoning relief "would be contrary and detrimental to the intent and integrity of the Zoning Regulations." The report noted that the Zoning Commission had recently adopted amendments to the R-4 zone to "clarify and reinforce" that this zone district was not intended to be an apartment zone. (Exhibit No. 30.) By supplemental report dated January 7, 2012, OP reiterated its lack of support for the variances requested by the Applicant from the requirements pertaining to lot area and lot occupancy. (Exhibit 37.)

DDOT. By memorandum dated November 19, 2012, the DDOT indicated no objection to approval of the requested variance. (Exhibit 31.)

ANC Report. At a public meeting on November 14, 2012, with a quorum present, ANC 1A voted 6-1-1 in support of the application and recommended that the Board grant the requested relief. ANC 1A indicated no concerns with the Applicant's proposal, as finally revised. (Exhibit 33.)

Persons in support or in opposition. The Board received several letters in support of the application from residents living in the vicinity of the subject property. The letters stated that the Applicant's project would not have a substantially adverse effect on the use or enjoyment of the residents' nearby homes, or affect their light, air, or privacy, but would be comparable to other projects in the immediate vicinity and would not visually intrude on the character, scale, or pattern of houses in the neighborhood.

The Board also received a letter in opposition to the application from a neighbor of the subject property, who asserted that the application had not satisfied the requirements for variance relief and cited concerns that the density of the Applicant's proposal would cause substantial detriment to the public infrastructure, the availability of parking, and the cohesion of the row of two-story dwellings that comprise the street's architecture.

FINDINGS OF FACT

The Subject Property

1. The subject property is an interior lot located on the north side of Otis Place, N.W. near its intersection with 13th Street (Square 2829, Lot 57). The parcel is rectangular, 18 feet wide and 100 feet deep, and has an area of 1,800 square feet. A public alley, 10 feet wide, abuts the rear lot line.

2. The subject property is improved with a row building, built around 1909, that is two stories in height and has a cellar. The building at the subject property occupies approximately 65.5% of the lot.[2] The property has a rear yard of 34 feet. Two parking spaces are located at the rear of the lot, accessible from the public alley.

3. The building on the subject property is attached to a similar building, one of a series of row buildings, on the east. The western side of the building, which contains several windows on both floors, abuts the rear yards of five residential row buildings that front

[2] The Applicant originally stated that the existing lot occupancy at the subject property was 54%. However, the Applicant subsequently realized that an error had been made in that calculation and corrected the application to state that existing lot occupancy was 65.5%. The party in opposition asserted that existing lot occupancy was 68%. Even if true, that higher figure would not alter the Board's analysis of the Applicant's request for variance relief.

on 13th Street, separated by a walkway between the Applicant's building and the rear yards.

4. The building on the subject property was formerly used as a rooming house with as many as 11 bedrooms. Exterior stairs were installed to provide access from both floors of the building to the rear yard. The building is presently in a deteriorated condition, has an inefficient layout due to the numerous bedrooms, and lacks a kitchen.

5. The subject property is located in an R-4 District mapped between C-2-A Districts along 11th and 14th Streets and a C-3-A District along Georgia Avenue.

6. The majority of lots in the immediate vicinity of the subject property are developed with row or semi-detached dwellings, generally two or three stories in height. A number of apartment houses, as well as a shopping area, are located within a half-mile of the subject property.

The Applicant's Project

7. The Applicant proposes to construct a third-story addition to the existing building, and to convert its use to a four-unit apartment house. The addition will be constructed of brick and will occupy substantially the same building footprint; the existing rear yard will not decrease in size. Building height will increase from two stories and approximately 20 feet to three stories and 39 feet where a maximum of three stories and 40 feet are permitted. (11 DCMR § 400.1.)

8. The planned renovation of the subject property will decrease lot occupancy slightly, from 65.5% to 64.75%, due to changes in the building's rear deck. The depth of the new deck will be less than the depth of the existing deck, and its width will also decrease due to the presence of a new spiral staircase at the rear of the building.

9. The enlarged building will provide one apartment per floor, including the cellar. The apartments, each with two bedrooms, will range in size from approximately 836 square feet to 1,145 square feet.

Harmony with Zoning

10. The R-4 District is designed to include 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 or more families. (11 DCMR § 330.1.) The primary purpose of the R-4 zone is the stabilization of remaining one-family dwellings. (11 DCMR § 330.2.) The R-4 District is not intended to become an apartment house district as contemplated under the General Residence (R-5) districts, since the conversion of existing structures is controlled by a minimum lot area per family requirement. (11 DCMR § 330.3.)

11. A rooming or boarding house is permitted as a matter of right in an R-4 District, subject to certain requirements, including that accommodations may not be provided to transient guests who stay 90 days or less at the premises, cooking facilities may not be provided in any individual unit, and no central dining or food preparation area may be provided for guests. 11 DCMR § 330.6.

12. In the R-4 District, a building that was existing before May 12, 1958, such as the Applicant's building, may be converted to an apartment house as a matter of right, as limited by the lot area requirement set forth in §§ 401.3 and 403.2. 11 DCMR § 330.5. Pursuant to § 401.3, conversion of a building to an apartment house requires 900 square feet of lot area per apartment. Pursuant to § 403.2, the other limit on matter-of-right conversion of a building to an apartment house, the maximum permitted lot occupancy for conversion of a building to an apartment house is the greater of 60% or the lot occupancy as of the date of conversion.

CONCLUSIONS OF LAW AND OPINION

The Applicant requests area variances from requirements pertaining to maximum lot occupancy under § 403.2,[3] the enlargement of a nonconforming structure under § 2001.3, and minimum lot area under § 401.3 to allow the enlargement and conversion of a two-story, 11-bedroom rooming house to a three-story, four-unit apartment house in the R-4 District at 1221 Otis Place, N.W. (Square 2829, Lot 57). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3) (2008), to grant variance relief 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 the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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* 11 DCMR § 3103.2.)

Based on the findings of fact, the Board finds that the application satisfies the requirements for approval of the requested area variance relief. The Board credits the testimony of the Applicant that the subject property is faced with an exceptional situation or condition due to a confluence

[3] The Applicant's request for relief was self-certified and, apparently assuming that the maximum permitted lot occupancy at the subject property is 60%, "in an abundance of caution" also sought variance relief from the requirements relating to lot occupancy and enlargement of a nonconforming structure. The Board notes that, pursuant to § 403.2, the R-4 District permits a maximum lot occupancy of 60% for a row dwelling or flat, and 40% for "all other structures" (other than certain uses not relevant here), while the maximum permitted lot occupancy for the conversion of a building or structure to an apartment house is the greater of 60% or "the lot occupancy as of the date of conversion." Consistent with the Applicant's submission, the Board considers the application a request for area variance relief to permit lot occupancy of 64.75% rather than 60%.

of factors related to the deteriorated condition of the existing structure and its prior use as an 11-room boarding house. Due to the past deterioration of the building and deferred maintenance by prior owners, the Applicant must expend considerable funds to ensure the building's compliance with the Construction Code and to construct marketable dwelling units. Because of its past use as a rooming house with 11 bedrooms, the building presently has a number of unnecessary interior walls and an unconventional layout, increasing the cost of renovation of the building.[4]

The party in opposition asserted that the facts presented by the Applicant "are not sufficient to establish the 'uniqueness' of the property, and thus the Applicant cannot meet its legal burden to prove that there is an extraordinary or exceptional condition affecting the property." (Exhibit 34.) The Board finds no merit in the party in opposition's assertion that the building at the subject property was no longer an 11-room rooming house because of its alleged use more recently as a one-family dwelling. While the Applicant may not have obtained the necessary certificate of occupancy or license to continue the prior rooming house use, the Board credits the Applicant's testimony that the building, when acquired by the Applicant, was configured as a rooming house with 11 bedrooms, and its multiple interior walls and inefficient layout hindered the renovation of the building to another use.

The Board also concludes that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant by precluding the renovation of the building into a viable residential use. The Board credits the testimony and evidence provided by the Applicant, including the financial analysis showing the expected return on the renovation of the building, in finding that conversion to four dwelling units is necessary for the viable reuse of the building.

The party in opposition argues that "the extraordinary expense of renovating a property [is] not sufficient to satisfy the 'practical difficulty' prong," citing *Myrick v. District of Columbia Bd. of Zoning Adjustment*, 577 A.2d 757 (D.C. 1990). As noted by the Applicant, the District of Columbia Court of Appeals has held that "economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases." *Tyler v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362, 1366 (D.C. 1992); *see also, Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990) (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; at some point economic harm becomes sufficient, at least when coupled with a significant limitation on the utility of the structure); *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936 (D.C. 1979) (lot area variance for conversion of two-family flat into

[4] As noted by OP, the Board has previously approved applications for zoning relief necessary to allow the conversion of a rooming house into an apartment house in the R-4 District, including an application concerning a property abutting the subject property in this case. *See* BZA orders issued in BZA Case Nos. 18115 (November 18, 2010) (variances from requirements pertaining to minimum lot area, maximum lot occupancy, courts, enlargement of a nonconforming structure, and parking to allow conversion of a 12-unit rooming house into a three-unit apartment house, with a new third-story addition at 3603 13th Street, N.W.) and 18297 (February 13, 2012) (variance from lot area requirement under § 401.3 to allow conversion of rooming house into a three-unit apartment house).

three-unit apartment house was appropriate where two-family dwelling was not marketable and would operate at a loss, but three units would allow a return). In light of the evidence presented by the Applicant, the Board concludes that the Applicant demonstrated a need for variance relief to allow four apartment units at the subject property, and did not agree with OP's contention that conversion to a three-unit apartment house would be economically feasible under the circumstances.

The Board was not persuaded by the party in opposition's contention that the Applicant's financial argument is without merit. The opposition contends that the financial challenge was self-created. He argued that financial feasibility depends principally on the fact that the Applicant paid too much for the building that was vacant and had been on the market for a long period of time. The "self-created hardship" is a factor generally applicable to a request for a use variance, not an area variance. *See, 1700 Block of N Street, NW v. District of Columbia Bd. of Zoning Adjustment,* 384 A.2d 674, 678 (D.C. 1978); *Wolf*, 397 A.2d at 945; *Gilmartin,* 579 A.2d at 1169 (D.C. 1990) (prior or constructive knowledge or a difficulty or hardship that is self-imposed is not a bar to an area variance), *citing A.L.W. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428, 431 (D.C. 1975).

For similar reasons, the Board concludes that the Applicant has also satisfied the requirements for variance relief from requirements related to lot occupancy and enlargement of a nonconforming structure. The Applicant does not propose to increase lot occupancy over the existing situation, and thus the planned enlargement of the building – a new third floor that will not alter the building's footprint substantially, but in fact will reduce lot occupancy slightly – will not increase the existing nonconforming lot occupancy or create any new nonconformity of the structure and addition combined.

The Board credits the testimony of the Applicant in concluding that approval of the requested variances will not cause any substantial detriment to the public good. After the conversion, the building will be restored to residential use, at a lower density than its prior 11-room boarding house use. OP testified that its recommendation of conversion of the existing building into three apartments would not negatively impact the surrounding neighborhood, in part because on-site parking would be adequate and the overall building envelope would remain the same. The Board does not find that the addition of the planned third floor, utilizing the footprint of the existing building and constructed to a height permitted under the Zoning Regulations, will result in any adverse impacts on the use of neighboring properties.

The Board credits the testimony from persons in support of the application who stated that the Applicant's project would be comparable to other projects in the immediate vicinity and would not visually intrude on the character, scale, or pattern of houses in the neighborhood. The Board does not find that the conversion to apartment house use or the addition of the planned third floor will cause substantial detriment to the neighborhood due to its density, effect on parking, or surrounding architecture. The neighborhood is characterized by a variety of building types and contains several apartment houses in the vicinity of the subject property, and the Applicant's

project will satisfy the zoning requirements for parking and thus will not significantly alter existing parking conditions in the neighborhood.

Similarly, the Board does not find that approval of the requested variance relief would substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. Conversion of the building into a four-unit apartment house will cause the property to remain in residential use in a manner consistent with the relatively lower density residential use of the surrounding neighborhood. The size of the Applicant's building, as enlarged, will remain consistent with the generally two- and three-story buildings in the vicinity of the subject property.

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)). In this case, ANC 1A adopted a resolution indicating its support for the application. The ANC recommended approval of the requested zoning relief and did not express any issues or concerns about the application, including the amendment by the Applicant seeking additional variance relief.

The Board is also required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give weight to the recommendations of the Office of Planning. The Board interprets OP's statement that it cannot support the application as its recommendation of denial. For the reasons stated above, the Board disagrees with OP's contention that the conversion of the rooming house to a three-unit building was economically feasible or that approval would be contrary and detrimental to the intent and integrity of the Zoning Regulations. Therefore, the Board does not find OP's recommendation to be persuasive.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for area variances from requirements pertaining to lot occupancy under § 403.2, enlargement of a nonconforming structure under § 2001.3, and minimum lot area under § 401.3 to allow the enlargement and conversion of a two-story, 11-bedroom rooming house to a three-story, four-unit apartment house in the R-4 District at 1221 Otis Place, N.W. (Square 2829, Lot 57). Accordingly, it is **ORDERED** that the application is **GRANTED,** subject to Exhibit 29A, Revised Plans.

VOTE: **4-0-1** (Lloyd J. Jordan, Marcie I. Cohen, Jeffrey L. Hinkle, and Nicole C. Sorg (by absentee ballot), voting to approve; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: June 13, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE 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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 18570 of 1845 North Capitol Street NE LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot area requirements under § 401.3, to allow a conversion of a flat into a three-unit apartment house in the R-4 District at premises 1845 North Capitol Street, N.E. (Square 3510, Lot 22).

HEARING DATE: June 18, 2013
DECISION DATE: June 18, 2013

DECISION AND ORDER

This self-certified application was submitted March 28, 2013 by 1845 North Capitol Street NE LLC ("Applicant"), the owner of the property that is the subject of the application. The application was filed pursuant to 11 DCMR § 3103.2 for an area variance from the minimum lot area requirement under § 401.3 to allow a conversion of a two-unit flat into a three-unit apartment house in the R-4 District at premises 1845 North Capitol Street, N.E. (Square 3510, Lot 22). Following a public hearing on June 18, 2013, the Board of Zoning Adjustment (the "Board") voted 3-0 in a bench decision to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated April 12, 2013, the Office of Zoning sent notice of the application to the Office of Planning ("OP"); the District Department of Transportation; the Councilmember for Ward 5; Advisory Neighborhood Commission ("ANC") 5E, the ANC for the area within which the subject property is located; and the single-member district ANC 5E-04.

A public hearing was scheduled for June 18, 2013. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on April 12, 2013, mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 5E. Notice was published in the *D.C. Register* on April 12, 2013 (60 DCR 5580).

Requests for Party Status. In addition to the Applicant, ANC 5E was automatically a party in this proceeding. There were no additional requests for party status.

Applicant's Case. The Applicant provided evidence in its Applicant's Statement filed with the Application, and from testimony provided by Cynthia Banuls, a principal of the Applicant.

Government Reports. By report dated June 11, 2013, and through testimony at the public hearing, OP recommended approval of the requested variance.

ANC Report. By Form 129 – Advisory Neighborhood Commission (ANC) Report, including an attachment, filed with the Office of Zoning on June 10, 2013, ANC 5E indicated that, at a regular, duly noticed monthly public meeting held on May 21, 2013 with a quorum present, the ANC voted 6-0-2 to recommend that the Board deny the application. In the attachment, ANC 5E claimed four reasons in support of its recommendation: (i) the lot area of 1,311 square feet is less than half the minimum requirement of 2,700 square feet required for a three-unit apartment house conversion in the R-4 District; (ii) approving the variance will set a precedent in the community and developers will expect a zoning variance to convert to three-unit apartment houses; (iii) the subject property has been plagued with water problems at the basement level; and (iv) the building's historical use was not as a four-unit apartment house since the 1951 certificate of occupancy application did not denote the number of units, and the predominant use from 1981 was a two-unit flat. ANC 5E Commissioner Sylvia Pinckney provided testimony at the hearing commensurate with the ANC's resolution.

Persons in support. The Board received 24 letters of support from property owners within 200 feet of the subject property.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 1845 North Capitol Street, N.E., Square 3510, Lot 22.

2. Lot 22 is a rectangular-shaped property with a land area of 1,311 square feet.

3. The subject property is located in the R-4 Zone District.

4. The subject property is improved with a two-story row dwelling structure with one below-grade level.

5. The subject property was constructed prior to the May 12, 1958 effective date of the current versions of the Zoning Regulations.

6. The most recent certificate of occupancy for the subject property authorized its use as a two-family dwelling, also known as a flat.

7. The subject property has historical certificates of occupancy evidencing use as an apartment house from 1951 until 1989.

The Applicant's Project

8. At the time of Applicant's purchase of the subject property, the building had been vacant for several years and contained three kitchen areas within the building.

9. The Applicant applied for and received a building permit from DCRA to renovate the building as a three-unit apartment house, based on the existing condition of the building and the existence of certificate of occupancy evidence showing apartment house use prior to 1958.

10. After renovation pursuant to the building permit was substantially completed, the Applicant was denied a certificate of occupancy by DCRA, which claimed that the previous apartment house use was discontinued and therefore could not continue as a nonconforming structure.

Exceptional Condition of the Property Leading to Practical Difficulty

11. According to existing certificate of occupancy evidence, the subject building was approved as an apartment house from at least 1951 until 1989.

12. The Building consisted of three kitchen areas.

13. The Applicant was granted building permits to renovate the subject building as a three-unit apartment house.

14. The Applicant justifiably relied on the building permits to lawfully complete an expensive renovation project to use the subject building for a three-unit apartment house.

15. The Applicant would have a practical difficulty in reconfiguring the subject building back to a two-unit flat, or in closing off and not using the third unit.

No Substantial Detriment to the Public Good or the Integrity of the Zone Plan

16. The Applicant has restored a vacant and neglected property and brought it back to productive use.

17. The Application had letters of support from 24 neighbors, all located within 200 feet of the subject property. Other than ANC 5E, there was no testimony or letters in opposition to the Application.

18. The Applicant acted in good faith reliance on the approval from DCRA to renovate the subject building as a three-unit apartment house.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07(g)(3), to grant variance relief where "by reason of exceptional narrowness, shallowness, or shape of a specific 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 the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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* 11 DCMR § 3103.2.)

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) as a result of the property's size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the owner will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variance will not result in substantial detriment to the public good or the zone plan. *See Gilmartin* v. *District of Columbia Bd. of Zoning Adjustment,* 579 A.2d 1164, 1167 (D.C. 1990). In order to prove "practical difficulties," an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* at 1170.

The District of Columbia Court of Appeals has held that "an exceptional or extraordinary situation or condition" may encompass the buildings on a property, not merely the land itself, and may arise due to a "confluence of factors." *See Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

Because a conversion to a three-unit apartment house would require a land area of 2,700 square feet, or 900 square feet per unit, and the lot consists of only 1,331 feet, the applicant requires a variance from the minimum lot restrictions under 11 DCMR § 401.3 to allow the conversion of the subject building to a three-unit apartment house.

The Board concludes that the Application satisfies the requirements necessary for variance relief, as follows:

The Board concludes that the condition and the circumstances surrounding the subject property constitute an exceptional condition and situation. The building has historically been used as an apartment house, was configured for three apartment units when the applicant purchased it, and was approved for significant renovation as a three-unit apartment building. The zoning history

of a property, including past actions of governmental authorities, can constitute the "events extraneous to the land" which create the requisite exceptional situation or condition. *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979). In *Monaco*, a zoning history which implicitly approved a use and thereby gave rise to good-faith, detrimental reliance by the property owner, helped to establish the necessary exceptional situation.

The situation here is not unlike the circumstance that confronted the Board in *Application No. 17960 of Lucia and Claudio Rosan* (2009), *affirmed, Oakland Condominium v. District of Columbia Bd. of Zoning Adjustment* 22 A.3d 748 (D.C. 2011). Like the applicant in *Rosan*, the Applicant here "reasonably relied on the issuance of the building permits by DCRA in believing that they were acting in accordance with the zoning regulations." *Id.* at 753. Also, the Applicant here "had no reason to understand that the building permit[] did not represent the zoning determination that they were seeking." *Id.* at 755. Thus, the Applicant's "good faith and detrimental reliance constitute[ed] an exceptional situation." *Id.*

The Board concludes that complying with the Zoning Regulations and converting the subject building back to a two-unit flat would impose an unnecessary burden on the owner because of the extraordinary expense necessary for such conversion.

The Board further finds that variance relief can be granted to this applicant without substantial detriment to the public good or the integrity of the zone plan. The R-4 District permits conversions to multiple family dwellings subject to a land area condition that cannot be met here. The additional density resulting will not prove detrimental to the neighborhood and the conversion of the vacant property will remove an existing adverse condition.

The Board notes ANC 5E's opposition to the application and addresses their four stated concerns as follows: (i) despite the fact that the subject property's land area was only 1,331 square feet, the application otherwise met the requirements for variance relief; (ii) the Board considers each application for its own merits and is not setting a precedent for other properties in the neighborhood; (iii) previous water problems on the subject property are not relevant to the Board's consideration of this variance relief and at any rate, this project is likely to correct such problems; and (iv) the subject property has an obvious historical use as an apartment house, which was a contributing, but not the only, factor in the Board's decision to grant relief.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking the variance relief that the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested 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.

For the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby **ORDERED** that the application, subject to Exhibit 13 – Plans, is hereby **GRANTED.**

VOTE: **3-0-2** (S. Kathryn Allen, Jeffrey L. Hinkle, and Robert E. Miller to Approve; Lloyd J. Jordan not present, and the third mayoral appointee seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: September 9, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE 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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 19570 of GWC 220 Residential LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the lot area requirements of Subtitle E § 201.4 to allow an additional apartment in an existing 12-unit apartment house in the RF-3 Zone at premises 220 2nd Street, S.E. (Square 762, Lot 8).[1]

HEARING DATE: September 27, 2017
DECISION DATES: October 18, 2017 and October 25, 2017[2]

DECISION AND ORDER

This self-certified application was submitted on June 26, 2017 on behalf of GWC 220 Residential LLC, the owner of the property that is the subject of the application (the "Applicant") to request an area variance from the lot area requirements of Subtitle E § 201.4 to allow an additional apartment in an existing 12-unit apartment house in the RF-3 zone at 220 2nd Street, S.E. (Square 762, Lot 8). Following a public hearing, the Board voted to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated July 18, 2017, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 6 as well as the Chairman and the four at-large members of the D.C. Council; Advisory Neighborhood Commission ("ANC") 6B, the ANC in which the subject property is located; and Single Member District/ANC 6B01. On the same date, the Office of Zoning also provided notice of the application to the Architect of the Capitol. Pursuant to 11 DCMR Subtitle Y § 402.1, on July 18, 2017 the Office of Zoning also

[1] The caption has been modified to reflect the name of the applicant. The initial application was submitted on behalf of George Calomiris and William Calomiris. (*See* Exhibit 8.) A statement in support of the application was submitted on behalf of "William Calomiris Company and George and William Calomiris." (*See* Exhibit 12.) In its prehearing statement, the Applicant indicated that the "BZA application was initially submitted under the names of two of the managing members of the limited liability company that owns the property. The correct ownership entity name is GWC 220 Residential LLC." (*See* Exhibit 32.)

[2] The Board deferred its decision in the case from October 18, 2018 to the decision meeting of October 25, 2018.

mailed letters providing notice of the hearing to the Applicant, the Councilmember for Ward 6, ANC 6B, and the owners of all property within 200 feet of the subject property. Notice was published in the *DC Register* on August 11, 2017 (64 DCR 7886).

Party Status. The Applicant and ANC 6B were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Peter Waldron, the owner and resident of an attached principal dwelling abutting the subject property to the north.

Applicant's Case. The Applicant provided evidence in support of the requested zoning relief to allow a new apartment in the existing partial basement of the building. The Applicant proposed to create the new apartment since, according to the Applicant, the basement space was not needed for storage and was no longer needed for laundry facilities, and would otherwise go unused.

OP Report. By memorandum dated September 15, 2017, the Office of Planning recommended approval of the requested zoning relief. (Exhibit 35.)

DDOT. By memorandum dated September 15, 2017, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 36.)

ANC Report. By letter dated September 15, 2017, ANC 6B indicated that, at a properly noticed public meeting on September 12, 2017 with a quorum present, the ANC voted to support the application provided that the Applicant was required to provide "an exclusive indoor trash storage room." (Exhibit 37.)

Party in Opposition. The party in opposition alleged that approval of the application would create "construction disruption and possible issues with rodents."[3] (Exhibit 34.)

Person in support. The Board received a letter in support of the application from the National Indian Gaming Association, the owner of the abutting property to the south. The letter stated that the creation of an additional apartment unit in the building at the subject property would have no substantial impact on the neighborhood.

Person in opposition. The Board received a letter in opposition to the application from the zoning committee of the Capitol Hill Restoration Society. The letter stated that the requirements for approval of the requested variance relief had not been met because the Applicant had not demonstrated a need for the additional apartment; the Applicant's proposal to provide bicycle storage in the rear yard, rather than in the basement, was not workable because only the basement

[3] The Applicant had discussions with the party in opposition about construction issues, which are outside the purview of the Board of Zoning Adjustment. They were unable to reach agreement at the time of the public hearing on this application but the Applicant expressed an intent to continue to efforts to enter into a construction management agreement with Mr. Waldron. The party in opposition agreed that the Applicant's proposed trash storage and collection measures would be "adequate" to address concerns about rodents. (Transcript of September 27, 2017 at 214.)

apartment would have access to the rear yard; and the building lacked adequate space to provide indoor trash storage.

FINDINGS OF FACT

1. The subject property is a relatively large parcel located on the east side of 2nd Street S.E. between C Street and Pennsylvania Avenue, S.E. (Square 762, Lot 8).

2. The subject property is irregularly shaped but generally rectangular, with 54 feet of frontage along 2nd Street and a narrower lot width for approximately one-third of the length of the lot at the rear. The lot area is 6,657 square feet.

3. The subject property is improved with a three-story building, with a partial basement, built as an apartment house around 1955-1956. The building is configured as 12 apartments, each containing two bedrooms and approximately 800 square feet of space. A paved area is located at the rear of the lot, accessible by public alleys that abut the subject property along the rear (east) lot line and along a portion of the northern property line.

4. The partial basement is accessible via a stairway located in the first-floor hallway of the building near the front door, or via an entry located on the north side of the building. The basement has been used primarily as a laundry room for building residents. As part of a renovation of the building, the Applicant has provided laundry facilities in each of the existing apartments and the space formerly occupied by the communal laundry facilities is vacant and unused.

5. The Building has never provided storage, and because the existing apartments are relatively large, the residents' demand for storage facilities in the basement would be minimal.

6. A portion of the basement is used to provide trash storage. The Applicant now plans to create a new room in the basement for trash storage. The trash will be removed from the building via the front door for collection, which the Applicant indicated will occur three times per week.

7. The apartment building shares a party wall with buildings on each of the adjoining lots. The property to the south is used as office space by a nonprofit entity, the National Indian Gaming Association.[4] The party in opposition lives in the attached principal residence to the north.

8. Properties near the subject property are developed primarily with two-story attached dwellings, some used as flats. Other nearby properties include attached buildings used as

[4] The Board approved, subject to conditions, the special exception and area variance relief requested to allow the expansion of the abutting building at 224 2nd Street, S.E. for use by a non-profit organization. *See* Application No. 17985 (final date of order: November 10, 2009); modified in Application No. 18114 (December 9, 2010).

offices, a hotel, and commercial buildings. The Madison Building of the Library of Congress is located across 2nd Street to the west of the subject property.

9. The subject property is located within convenient walking distance of public transit, including bus stops on Pennsylvania Avenue and the nearby Capitol South Metrorail station. Shared bicycle facilities are also available in the vicinity. The Applicant plans to install bicycle parking facilities at the rear of the apartment building.

10. The subject property is located in the Capitol Hill historic district. However, the apartment building was constructed after the designated period of significance and is not a contributing building to the historic district.

11. The subject property is zoned RF-3. The purpose of the RF-3 zone is to provide for areas adjacent to the U.S. Capitol precinct predominantly developed with attached houses on small lots within which no more than two dwelling units are permitted. (Subtitle E § 500.1.) The RF-3 zone is intended to: (a) promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the adjacent area; (b) reflect the importance of and provide sufficient controls for the area adjacent to the U.S. Capitol; (c) provide particular controls for properties adjacent to the U.S. Capitol precinct and the adjacent area, having a well-recognized general public interest; and (d) restrict some of the permitted uses to reduce the possibility of harming the U.S. Capitol precinct and the adjacent area. (Subtitle E § 500.2.)

12. The Applicant proposes to create a new apartment, which will become the 13th apartment unit in the building, by converting the area formerly used for laundry facilities into a one-bedroom apartment containing approximately 615 square feet of space. Creation of the new apartment will not entail any enlargement or other change to the exterior of the building.

13. An apartment house in an RF-3 zone, including an apartment house existing before May 12, 1958, may not be renovated or expanded so as to increase the number of dwelling units unless there are 900 square feet of lot area for each dwelling unit, both existing and new. (Subtitle E § 201.4.) With a lot area of 6,657 square feet, the subject property would contain 512 square feet of lot area for each of the 13 planned apartments.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks an area variance from the minimum lot area requirement of 900 square feet per apartment unit set forth in Subtitle E § 201.4 to allow one additional apartment in an existing 12-unit apartment house in the RF-3 zone at 220 2nd Street, S.E. (Square 762, Lot 8). The Board is authorized under § 8 of the Zoning Act to grant variance relief 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 the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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* 11 DCMR Subtitle X § 1000.1.)

Extraordinary or exceptional situation. For purposes of variance relief, the "extraordinary or exceptional situation" need not inhere in the land itself. *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Rather, the extraordinary or exceptional conditions that justify a finding of uniqueness can be caused by subsequent events extraneous to the land at issue, provided that the condition uniquely affects a single property. *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987); *DeAzcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978) (the extraordinary or exceptional condition that 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….[The] 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….); *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979) (for purposes of approval of variance relief, "extraordinary circumstances" need not be limited to physical aspects of the land). The extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; the critical requirement is that the extraordinary condition must affect a single property. *Metropole Condominium Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-1083 (D.C. 2016), citing *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Board concurs with the Applicant's assertion that the subject property is characterized by an exceptional condition arising from the confluence of the size, age, history, and location of the existing apartment house. The building was constructed as a 12-unit apartment house at a time when that use was permitted as a matter of right at that location. The Applicant's building is the only purpose-built apartment house in the square, an area characterized by a variety of residential, commercial, and institutional uses. The building provided laundry facilities in the basement for the residents' use, but, in response to changes in market conditions and technology since the building was constructed around 1955, the Applicant has undertaken a renovation of the building that will provide individual laundry facilities in each apartment. As a result, the former laundry space in the basement has become vacant. Especially since the basement was only partially excavated, the building was configured in such a way that limits access to the basement by residents of the existing apartments, which now limits the potential reuse of the space.

Practical difficulties. An applicant for area variance relief is required to show that the strict application of the zoning regulations would result in "practical difficulties." *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). A showing of practical difficulty requires "'[t]he applicant [to] demonstrate that ... compliance with the area restriction would be unnecessarily burdensome….'" *Metropole Condominium Ass'n v. District of Columbia*

Bd. of Zoning Adjustment, 141 A.3d 1079, 1084 (D.C. 2016), quoting *Fleishman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011). In assessing a claim of practical difficulty, proper factors for the Board's consideration include the added expense and inconvenience to the applicant inherent in alternatives that would not require the requested variance relief. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976).

The strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant by precluding reuse of a basement space no longer needed for its original purpose but not well suited to another use that would not require variance relief, such as storage. The Applicant demonstrated that, absent variance relief, the basement space formerly occupied by the communal laundry facilities would likely remain vacant and unused, or at best underutilized. Because of the interior configuration of the building and the existing areas of access, the partial basement is not readily accessible to residents, and cannot be practically incorporated into the existing ground floor units. Because the existing apartments are relatively large, the Applicant predicted that the residents' demand for storage facilities in the basement would be minimal; the building has never offered storage. The Applicant also predicted low demand for bicycle storage in the basement, especially in light of plans to provide bicycle storage at the rear of the property.

No substantial detriment or impairment. The Board finds that approval of the requested variance will not result in substantial detriment to the public good or cause any impairment of the zone plan. The Applicant does not propose any enlargement of the existing building but will continue the existing apartment house use with one additional apartment. The Board does not find that the addition of a single one-bedroom apartment within the existing building will have any significant impact on the vicinity of the subject property, including the U.S. Capitol precinct and the adjacent area. The Applicant indicated that certain measures will be undertaken with respect to trash storage and collection in an effort to minimize the potential for adverse impacts especially pertaining to rodents, and the Board adopts those measures as conditions of approval in this order. The addition of an apartment within the existing building will be consistent with the residential nature of the RF-3 zone, without affecting the principal dwellings and flats in small attached buildings near the subject property.

Great weight

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.).) For the reasons discussed above, the Board concurs with OP's recommendation that the application should be approved in this case.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)).) In this case ANC 6B expressed support for the Applicant's proposal provided that the Board "specifically requires an exclusive indoor trash storage room." The ANC expressed concern about "trash

management for the building" and opposed the placement of receptacles in front of the apartment building. The Board concurs with the ANC that "the option of placing trash receptacles in the exterior of this building [is] unacceptable given the history of rodent problems in that area." (Exhibit 37.) The Board concludes that the conditions of approval adopted in this order are sufficient to address the concerns of ANC 6B with respect to trash storage, which will occur inside the building. Collection of the trash by way of the front door will ensure that trash will not be stored improperly at the rear of the building.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for an area variance from the lot area requirement of Subtitle E § 201.4 to allow an additional apartment in an existing 12-unit apartment house in the RF-3 zone at 220 2nd Street, S.E. (Square 762, Lot 8). It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 33 – REVISED ARCHITECTURAL PLANS AND ELEVATIONS - AND WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall store trash receptacles within the building.

2. The Applicant shall ensure that trash is removed from the interior storage location through the front door of the building.

3. The Applicant shall schedule trash collection at least three times per week.

VOTE: 4-0-1 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Anthony J. Hood (by absentee ballot) voting to APPROVE; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: August 16, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE 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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 19662 of Demetrios Bizbikis, as amended[1], pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the residential conversion requirements of Subtitle U § 320.2, and pursuant to 11 DCMR Subtitle X, Chapter 10, for area variances from the lot area per dwelling unit requirements of Subtitle E § 201.4 and Subtitle U § 320.2(d), to permit an existing four-unit apartment house in the RF-1 Zone at premises 924 N Street, N.W. (Square 368, Lot 890).

HEARING DATES: January 10, February 14, March 28, and April 18, 2018
DECISION DATE: April 18, 2018

DECISION AND ORDER

This application was submitted on October 27, 2017 by Demetrios Bizbikis, the owner of the property that is the subject of the application (the "Applicant"). The Applicant requests a special exception under the residential conversion requirements of Subtitle U § 320.2, and area variances from the lot area per dwelling unit requirements of Subtitle E § 201.4 and Subtitle U § 320.2(d), to permit an existing four-unit apartment house in the RF-1 Zone. Following a public hearing on April 18, 2018, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated November 20, 2017, the Office of Zoning sent notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward Two; Advisory Neighborhood Commission ("ANC") 2F, the ANC for the area within which the Subject Property is located; and the single-member district ANC 2F06. Pursuant to 11-Y DCMR § 402.1, on November 20, 2017, the Office of Zoning mailed notice of the hearings to the Applicant, ANC 2F, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on November 24, 2017. (64 DCR 12068.)

[1] The memorandum from the Zoning Administrator ("ZA") originally submitted with the application noted that a use variance from Subtitle U § 303.1(b) is required. (Exhibit 9.) The Applicant submitted a revised ZA memorandum indicating that an area variance for lot area per unit under Subtitle E § 201.4 was required instead. (Exhibit 35.) At the public hearing on April 18, 2018, the Applicant verbally amended the application to add special exception relief for residential conversion under Subtitle U § 320.2 and a variance from Subtitle U § 320.2(d), after the issue was raised by the office of the Attorney General. The caption has been revised accordingly.

Party Status. The Applicant and ANC 2F were automatically parties in this proceeding. There were no requests for party status.

OP Report. In its initial report dated April 6, 2017, OP indicated that it needed additional time to review supplemental information submitted by the Applicant. (Exhibit 44.) By a report dated April 10, 2018, OP recommended approval of variance relief pursuant to 11-E DCMR § 201.4, subject to the condition that one of the four units is dedicated as affordable under Inclusionary Zoning ("IZ"). (Exhibit 49.) At the time OP's report was submitted, the Applicant had not amended its application to request special exception relief under Subtitle U § 320.2 and variance relief under Subtitle U § 320.2(d). Under Subtitle U § 320.2(b), the Applicant is required to set aside one IZ unit, as requested by OP; therefore, it need not be adopted as a condition of the Order.

DDOT Report. By memoranda dated December 29, 2017, DDOT indicated it had no objection to the originally requested variance relief. (Exhibit 33.)

ANC Report. At a regular public meeting on April 4, 2018, with a quorum present, ANC 2F voted 6-0-1 to oppose the application. (Exhibit 50.) The ANC determined that the Applicant failed to meet the three-prong test for an area variance. Specifically, the ANC raised the following issues: (1) the Subject Property is not affected by an exceptional or unique condition, as "numerous nearby corner lots that share nearly identical conditions conform to zoning code without practical difficulties;" (2) the Applicant's argument for "practical difficulties" has no merit, as the property's prior use as a four-unit apartment was illegal under the Zoning Regulations; and (3) approving the application would substantially impair the zone plan, as it would "create favorable and exceptional circumstances for a property owner who has continuously violated - and profited from the violation of - established zoning regulations to which others in nearly identical circumstances conform." (Exhibit 50.)

FINDINGS OF FACT

1. The property is located 924 N Street N.W. (Square 368, Lot 890) ("Subject Property") and is zoned RF-1. The Subject Property has a lot area of approximately 2,273 square feet. (Exhibit 46.)

2. A residential structure on the Subject Property was constructed prior to May 12, 1958 with its current building footprint. (Exhibit 46; BZA Public Hearing Transcript of April 18, 2018 ("Tr.") at p. 10.)

3. The prior owner of the Subject Property converted the building into a four-unit apartment building in the early 2000's.

4. The Subject Property had and still has 568 square feet of lot area per dwelling unit.

5. The Zoning Regulations in place at the time of the conversion allowed for any structure constructed prior to the May 7, 1958 of the existing regulations to be converted to an apartment house by right pursuant to 11 DCMR § 330 (e), but imposed a lot area requirement of 900 square feet per dwelling unit under 11 DCMR § 401.3.

6. Although the Subject Property did not meet that lot area requirement, there is no evidence that the then owner sought area variance relief and the Department of Consumer and Regulatory Affairs ("DCRA") is unable to verify that a building permit for this conversion was issued. (Exhibit 49.)

7. The Subject Property has been operating as a four-unit apartment house for over 15 years and has not been expanded since the time of its conversion. (Exhibit 46; Tr. at pp. 10, 11.)

8. The Applicant inherited the property in 2014. (Tr. at pp. 12-13.) The Applicant provided for the record a certificate of occupancy from 2004 indicating that the Subject Property contains a four-unit apartment building, and floor plans stamped by DCRA in 2001, which also indicate four units. (Exhibits 45, 47.) The Applicant considered these documents to be evidence that the conversion to four units was legally permitted and continued the property's use as a four-unit apartment house. (Exhibit 49.)

9. Effective June 26, 2015, the Zoning Commission in Case No. 14-11 repealed the provision permitting matter-of-right conversion, allowing for only matter-of-right conversions of pre-1958 non-residential buildings. (Former 11 DCMR § 330.7, presently 11-U DCMR § 301.2.) Conversion of pre-1958 residential structures would require special exception approval, and the fourth dwelling unit and every additional even number dwelling unit thereafter would be subjection to the Inclusionary Zoning Regulations. (11-U DCMR § 320.2.) In addition, the 900 square feet per unit requirement was made a condition of the special exception approval. (Former 11 DCMR § 336, currently 11-U DCMR § 320.2.)

10. At some point in 2017, DCRA became aware of the existence of the apartment house and did not consider the certificate of occupancy and stamped floor plans to be sufficient to prove that the conversion was permitted. In a memorandum dated December 2017, the Zoning Administrator ("ZA") determined that area variance relief is required from the lot area requirement of 11-E DCMR § 201.4. (Exhibit 35.)

11. Subtitle E § 201.4 also was adopted through Case No. 14-11, as 11 DCMR § 401.11, and provides:

> An apartment house in an R-4 Zone District, whether converted from a building or structure pursuant to former § 330.5(e) or existing §§ 330.7 or 336, or existing before May 12, 1958, may not be renovated or expanded so as to increase the number of dwelling units unless there are nine hundred square feet (900 sq. ft.) of lot area for each dwelling unit, both existing and new.

12. The apartment house was not "converted from a building or structure pursuant to former § 330.5(e) or existing §§ 330.7 or 336", it was not "existing before May 12, 1958", and even if it met either factor, the Applicant is not requesting that it be renovated or expanded, only that it be brought into compliance with the existing regulations. (Exhibit 46; Tr. at p. 10.)

13. Although both the predecessor provisions to 11-E DCMR § 201.4 and 11-U DCMR 320.2(d) were added at the same time through the same case, the ZA required a variance under the first, without referring the Applicant for a special exception under the second. Since Subtitle E § 201.4 does not apply to this application, but Subtitle U § 320.2(d) does, the Office of the Attorney General advised that the Applicant should apply for both the special exception - to validate its conversion under Subtitle U § 320.2 - and an area variance - because the conversion did not meet that provision's 900 square foot per dwelling unit limitation under Subtitle U § 320.2(d). The Applicant verbally amended its application at the public hearing to include a special exception under Subtitle U § 320.2 and an area variance from Subtitle U § 320.2(d). The originally-requested area variance from Subtitle E § 201.4 was retained as a part of this application in an abundance of caution, but since it is the same requirement, the same facts and law apply.

14. Based on the elevations provided, the existing structure does not exceed 35 feet in height. (Exhibit 8.)

15. As required by 11-U DCMR 320.2 (b), the Applicant is setting aside one of the four units as an Inclusionary Zoning Unit. (Tr. at p. 9.)

16. The Subject Property is bordered by N Street, N.W. to the north and Blagden Alley, N.W. to the west. (Exhibit 4.) A commercial building abuts the Subject Property on the southern lot line. The adjacent property to the east is also a three-unit apartment house that was in existence prior to May 12, 1958. (Tr. at pp. 10, 14.)

17. The owner of the Subject Property is unable to acquire additional land from an adjacent property owner in order to meet the lot area per dwelling requirement. (Tr. at pp. 10-11.)

18. The Applicant indicates that bringing the Subject Property into compliance with the Zoning Regulations would involve converting the second floor into one unit, relocating two bathrooms, reconfiguring plumbing, removing the second kitchen, demolishing fire separation walls, and reconfiguring the unit to meet building code standards. (Exhibit 34.) The Applicant also indicates that the reconfiguration may require partial demolition of the existing structure (Exhibit 46.) The Applicant's projected cost of reconfiguration is $300,000. (Exhibit 34.)

19. As noted by OP, the reconfiguration process would also require evicting existing tenants of the Subject Property. (Exhibit 49.)

20. The Subject Property has four designated on-site parking spaces for tenants at the rear of the building. (Exhibits 34, 49.)

21. The existing structure has a similar design to the adjacent building and to nearby buildings. (Exhibit 49.)

CONCLUSIONS OF LAW AND OPINION

Special Exception Relief

The Applicant requests special exception relief pursuant to 11-U DCMR § 320.2 of the Zoning Regulations in order to permit an existing four-unit apartment house in the RF-1 Zone. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11-X DCMR § 901.2.)

Pursuant to Subtitle U § 320.2, the "specific conditions" include:

(a) The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.);
(b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the [inclusionary zoning set-aside requirements];
(c) There must be an existing residential building on the property at the time of filing an application for a building permit;
(d) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;
(e) An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on the adjacent property;
(f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of an operative chimney or other external vent on an adjacent property required by any municipal code;
(g) Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing or permitted solar energy system (of at least 2kW) on an adjacent property;
(h) A roof top architectural element original to the house such as cornices, porch roofs, a turret, tower, or dormers shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size;
(i) Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:
    (1) The light and air available to neighboring properties shall not be unduly affected;

(2) the privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and
(3) the conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street or alley;

Based on the findings of fact, the Board concludes that the request for special exception relief, as represented by the submitted plans, testimony, and evidence, satisfies the requirements of 11-U DCMR § 320.2. Based on the elevations provided, the Board finds that the existing structure does not exceed 35 feet in height. As there are four units, the Inclusionary Zoning set-aside requirement of Subtitle U § 320.2(b) applies, and the Applicant's agent testified that he will set aside an Inclusionary Zoning unit accordingly. There is an existing residential building on the property; however, the lot does not provide 900 square feet of area as required by Subtitle U § 320.2(d). Accordingly, the Applicant has requested variance relief from that requirement. As the application does not involve new construction or alteration of the existing structure, the requirements of Subtitle U § 320.2(e)-(i) do not apply in this case. The Board concludes that the special criteria of Subtitle U § 320.2 are met.

Further, regarding the general special exception requirements, the Board finds that allowing the four-unit apartment house on the Subject Property will not adversely affect the use of neighboring properties as required by 11-X DCMR § 901.2. Granting the application would not introduce additional impacts on the neighboring properties, but rather, allow the continued use of the Subject Property as a four-unit apartment. No evidence or testimony was provided that the continued use of the property as an apartment house would cause adverse impacts on neighboring properties. The Board finds that the addition will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. Although the RF-1 Zone does not permit four-unit apartment houses as a matter of right, the Zoning Regulations allow for such a use when the special exception criteria enumerated above are met. Therefore, in finding that the criteria are met, including the variance request discussed below, the Board finds that this use would be in harmony with the purpose and intent of the Zoning Regulations.

Variance Relief

The Applicant requests area variances from the lot area per dwelling unit requirement as reflected in Subtitle E § 201.4 and Subtitle U § 320.2(d). As noted, only the latter relief is needed. Both provisions require that there be a minimum of 900 square feet of land area per dwelling unit, while the Subject Property provides 568 square feet per unit. The Board is authorized to grant variances from the strict application of the Zoning Regulations 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 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 the property…." (D.C. Official Code 6-641.07(g)(3) (2008 Supp.); (11-X DCMR § 1002).)

A showing of "practical difficulties" must be made for an area variance, while the more difficult showing of "undue hardship," must be made for a use variance. *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case is requesting area variances and therefore is required to show that the strict application of the zoning regulations would result in "practical difficulties." *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), *quoting Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980).

Exceptional Condition

The D.C. Court of Appeals has recognized that the "exceptional situation or condition" of a property "need not be inherent in the land, but can be caused by subsequent events extraneous to the land." *De Azcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978). The zoning history of a property, including past actions of governmental authorities, can constitute the "events extraneous to the land" which create the requisite exceptional situation or condition. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979). In *Monaco*, a zoning history which implicitly approved a use and thereby gave rise to good-faith, detrimental reliance by the property owner, helped to establish the exceptional situation. Similarly, the D.C. Court of Appeals upheld the Board's decision to find an exceptional situation where an applicant detrimentally relied on the existing use of the property and the subsequent actions of city government officials, though the use of the property was not, in fact, permitted by the Zoning Regulations. *The Oakland Condominium v. District of Columbia Bd. of Zoning Adjustment,* 22 A.3d 748, 750-53 (D.C. 2011) (Finding exceptional zoning history in a case where the applicants purchased property that had been operating as a 15-unit rooming house, where the Certificate of Occupancy displayed inside the property contained no limit on the number of units, and where a Zoning Reviewer from DCRA indicated that only a "change of ownership" was needed, although a use exceeding eight units was not permitted as a matter of right.)

An exceptional zoning history exists in this case as well. The Board has found no evidence that the original conversion of the structure into an apartment house was permitted by DCRA; however, as in *Oakland Condominium* and *Monaco*, the Applicant relied on the long-standing, existing use of the property and subsequent documentation from DCRA, such as the Certificate of Occupancy listing a four-unit apartment house use issued in 2004, to draw the conclusion that the use was permitted on the Subject Property. The Board also notes that the Subject Property had been operating as a four-unit apartment house for over 15 years, and much of that time was prior to the Applicant's inheritance of the Subject Property in 2014. Moreover, the Board has found no evidence that the Applicant acted in bad faith when it detrimentally relied on the belief that the Subject Property's use as a four-unit apartment house was permitted. The Board concludes that the Applicant's good faith, detrimental reliance creates an exceptional zoning history, which meets the first prong of the variance test.

Practical Difficulty

A showing of practical difficulty requires "'[t]he applicant [to] demonstrate that ... compliance with the area restriction would be unnecessarily burdensome….'" *Metropole Condominium Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1084 (D.C. 2016), *quoting Fleishman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011). In assessing a claim of practical difficulty, proper factors for the Board's consideration include the added expense and inconvenience to the applicant inherent in alternatives that would not require the requested variance relief. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976).

In this case, the Board finds that compliance with the Zoning Regulations would be unnecessarily burdensome, as it would require the Applicant to either acquire additional land to meet the lot area requirement or undertake extensive renovations. As to the first alternative, the Applicant has been unable to acquire additional land from an adjacent neighbor. As to the option to reconfigure the structure, this process would require evicting current tenants and the Applicant estimates that the projected cost of reconfiguration is approximately $300,000. The Board concludes that requiring the Applicant to partially demolish and reconfigure the existing structure would create an undue burden on the Applicant in terms of added expense and inconvenience. The Board believes this situation presents a significant practical difficulty, and the Applicant therefore meets the second prong of the variance test.

No Detriment to the Public Good or Impairment of Zone Plan

Lastly, the Applicant must show that the 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. (11-X DCMR § 1002.) The Board is persuaded that the application has met the third prong of the variance test.

The Board concludes that approving the requested variance would not cause a substantial detriment to the public good. As noted above, the Subject Property has been operating as a four-unit apartment house for over 15 years, and no evidence was provided to the record that its operations have caused an adverse impact on the use and enjoyment of nearby properties. The Subject Property provides four off-street parking spaces, which mitigate any potential negative impacts on street parking in the neighborhood. Consistent with the requirement of 11-U § 320.2(b), the Applicant will set aside one of the four units as an affordable unit under the D.C. Inclusionary Zoning program.

The Board also concludes that granting the requested variance would not substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board agrees with OP's finding that the proposal will not impair the zone plan and credits OP's finding that "the potential harm to the regulations (since the zone was and is not intended to be an apartment zone) would need to be evaluated against the long-term nature of the existing use,

and the potential harm to the current tenants within the building." Although the RF-1 Zone does not allow for four-unit apartment houses as a matter of right, the Zoning Regulations do provide the opportunity for the conversion of a residential structure into a multiple dwelling unit apartment use under 11-U DCMR § 320.2. Because this use is permitted by special exception in the zone, provided that certain criteria are met, the Board finds that the allowing the use does not impair the zone plan. Further, the adjacent property is a three-unit apartment house, and the structure on the Subject Property has a similar design to the adjacent building and to nearby buildings. Accordingly, the Board concludes that the third prong of the variance test has been met.

Great Weight

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board concurs with OP's recommendation that the application should be approved.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)).) In this case, the ANC submitted a written report in opposition to the application and raised issues and concerns related to the three-prong test for an area variance. First, the ANC raised the issue that the Subject Property is not affected by an exceptional or unique condition, noting that "numerous nearby corner lots that share nearly identical conditions conform to zoning code without practical difficulties." (Exhibit 50.) In determining that there was an exceptional situation affecting the Subject Property, the Board did not conclude that the physical conditions of the lot were unique or exceptional. Instead, the Board found that the exceptional condition of the Subject Property arose from the unique zoning history of the property, as analyzed in more detail above. Therefore, the Board concurs with the ANC's contention that the physical characteristics of the Subject Property are not exceptional, yet finds that this criterion for variance relief is otherwise met.

With regard to the second prong, the ANC argued that the Applicant had not met its burden for showing "practical difficulties," as the property's prior use as a four-unit apartment was illegal under the Zoning Regulations. (Exhibit 50.) As discussed in this Order, the Board found that the Applicant would have to partly demolish or reconfigure the structure in order to comply with the Zoning Regulations, which amounts to a practical difficulty. The original conversion of the Subject Property was not part of the Board's analysis for this prong, as the Board found that the Applicant and current owner of the property acted in good faith and relied on the issuances from DCRA in continuing the operations of the four-unit apartment house. Therefore, the Board was not persuaded by the ANC's claim that this prong of the variance test had not been met.

Finally, the ANC raised the concern that approving the application would substantially impair the zone plan, as it would "create favorable and exceptional circumstances for a property owner who has continuously violated – and profited from the violation of – established zoning regulations to which others in nearly identical circumstances conform." (Exhibit 50.) The Board concluded that

approving the relief requested would not impair the public good or the zone plan, in that the use of the property has not had an adverse impact on the neighborhood and that residential conversions are permitted as a special exception in the RF-1 Zone. As previously discussed, the Board found no evidence that the original conversion of the Subject Property was permitted, but found that the Applicant, after inheriting the property in 2014, relied in good faith on representations that the use of the property was a four-unit apartment was lawful. Based in part on the uniqueness of this situation, the Board found that the Applicant met the burden of proof for variance relief. Because the Board's analysis was predicated on the finding that the current owner acted in good faith, the Board does not agree with the ANC's contention that granting the relief requested created favorable circumstances for property owners who knowingly violate the Zoning Regulations. The Board has considered the ANC's issues and concerns, but was ultimately not persuaded to deny the application.

Based on the case record, the testimony at the hearing, and the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under the residential conversion requirements of Subtitle U § 320.2, and pursuant to 11 DCMR Subtitle X, Chapter 10, for area variances from the lot area per dwelling unit requirement of Subtitle E § 201.4 and the lot area requirement of Subtitle U § 320.2(d), to permit an existing four-unit apartment house. It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 8 – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: **5-0-0** (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Peter G. May to APPROVE).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: November 6, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE 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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.