GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14138, of the William E. Miller Furniture Co., pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the floor area ratio requirements (Subsection 5301.1) and from the prohibition against any addition to a non-conforming structure which increases the existing nonconforming aspect of the structure (Paragraph 7105.12) to permit an addition to an existing nonconforming structure and the conversion of an existing furniture store to office/retail use in a C-2-A District at premises 400 - 8th Street, S.E., (Square 925, Lots 815 and 16).

HEARING DATE: May 23, 1984
DECISION DATE: May 23, 1984 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located on the southeast corner of the intersection of 8th and D Streets, S.E. The site is in a C-2-A District and is known as premises 400 8th Street, S.E.

2. The subject site has an irregular, horseshoe shape and consists of two lots that abut each other at the rear or southeast corner of the property. The total area of the site is 13,015.22 square feet.

3. The subject site is improved with a four story plus cellar brick structure of commercial design. The main section of the subject structure was constructed in approximately 1892. Additions were made to the structure in the 1930's and 1950's. The present structure occupies the entire site. Since approximately the mid-1930's, the structure has been used as a retail store by the William E. Miller Furniture Co., Inc.

4. There is access to and from the subject site through 8th Street on the west and through D Street on the north. At the northeast corner of the site, D Street merges with Pennsylvania Avenue, giving access to the site from the main commercial corridor of the area. There is alley access to the site at its southeast corner where a thirty foot wide public alley terminates at the rear entrance to the subject structure.

5. The subject square is part of the C-2-A strip that serves the Capitol Hill Historic District. The subject

commercial strip extends east and west along Pennsylvania Avenue, interrupted only by neighborhood parks, and extends south along 8th Street. The Capitol Hill neighborhood to the north and south of Pennsylvania Avenue is primarily residential in nature and is zoned R-4.

6. The subject structure was constructed prior to enactment of the 1958 Zoning Regulations and is a nonconforming structure. The floor area ratio of the subject structure is 4.16 whereas a maximum of 1.5 is permitted. The total floor area of the structure is 54,107.44 square feet. The subject structure has no rear yard, whereas a rear yard fifteen feet deep is required. The structure also predates the D.C. Fire Code and Building Code and does not conform to their requirements.

7. The applicant plans to convert the building to a mix of office and retail uses. In connection with the conversion, the applicant proposes to fill in three existing openings in the fourth floor of the building. The filling of the three openings would create a total of 1,396.93 square feet of new floor space on the fourth floor of the building, an increase of 2.6 percent in the floor area of the building and a corresponding small increase in the non-conforming floor area ratio (FAR) of the building. The reason for this request is that the fourth floor, by virtue of the existing openings, does not currently meet D.C. Building Code fire separation requirements. The three openings must be closed in order to provide a fire-resistant barrier between the third and fourth floors.

8. The three existing openings in the fourth floor in the subject structure have been designated as openings A, B and C. Opening A is located on the north side of the subject structure and has dimensions of 91.33 feet from east to west and 8.66 feet from north to south. Opening A may have been intended to create a mezzanine effect for a former retail use of the third and fourth floors of the structure. Opening B is located at the northeast corner of the subject structure and has dimensions of 26.66 feet from north to south and 12.84 feet from east to west. Opening B may have been created to permit repairs to the building facade necessitated by damage incurred during metro construction. Opening C is located near the southeast corner of the subject structure and has dimensions of 18.1 feet from east to west and 17.16 feet from north to south. Opening C accommodates a non-fire rated stairway, which the applicant plans to remove and replace with a new stair in compliance with the Fire Code in a new central core for the subject structure.

9. The applicant applied for building permits to do the proposed renovations and was informed by the Zoning Administrator that closing the three openings would be

considered an increase in FAR, although the closing of Opening B would not be so considered had documents about its genesis relating to repairs been available. Implementation of the proposed construction would require variances from the FAR requirements of Sub-section 5301.1 and from the prohibition against any addition to a nonconforming structure which increases the existing nonconforming aspect of the structure, as set forth in Paragraph 7105.12 of the Zoning Regulations.

10. The Board of Zoning Adjustment has the power to grant area variances provided that the applicant makes a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographic conditions. The Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the zone plan.

11. If this building had been erected under the present Building Code, none of these openings would have been allowed. Section 205.2 of the Code requires specified fire resistance between floors, whereas there is no resistance to fire between the third and fourth floors of the building due to the openings. The fourth floor does not meet the definition of a "mezzanine" in Section 201.1, because its floor area is more than one third of the area of the floor next below. Even if the fourth floor was a legal mezzanine, however, Section 620.5(2) would prohibit its connection to the third floor by an open stairway such as that now in Opening C, because neither floor has an automatic sprinkler system.

12. For the intended office use of the fourth floor of the building in question, Openings A, B, and C represent a greater practical difficulty than the small amount of floor space they represent. The openings are located so as to create impractical divisions between most of the existing floor area of the fourth floor. If they are not filled as the applicant proposes, it will be impossible to partition much of the fourth floor for offices, or to establish efficient circulation patterns among the limited offices which could be established between and around the openings.

13. The increase in FAR would be located entirely within the subject structure.

14. The relief requested will bring the subject building closer to overall compliance with modern codes. By allowing an increase of 1,396.93 square feet, or 2.6 percent in the floor area of the building, and a corresponding slight increase in FAR, the public will obtain a safer building

that complies with modern fire codes. The requested filling of the openings on the fourth floor will not be discernable outside of the building, although the overall improvements planned in conjunction with its conversion, which can be done as-of-right and thus are not subject to this application, will upgrade the entire building.

15. The previous use required 261 parking spaces, whereas the required parking for the proposed use is 132 spaces.

16. The Office of Planning, by report dated May 16, 1984, recommended that the application be approved. The Office of Planning was of the opinion that the property qualified for an area variance. The subject property was built prior to the enactment of the existing Zoning Regulations, Building and Fire Codes. The requested variance will not have substantial adverse area impact or impair the intent, purpose and integrity of the zone plan for the city. The Board concurs with the reasoning and the recommendations of the Office of Planning.

17. Advisory Neighborhood Commission 6B, by letter dated May 9, 1984, reported that the members present at the meeting of May 8, 1984, had voted unanimously to support the application. The ANC was of the opinion that the applicant had demonstrated a practical difficulty. The Board concurs with the reasoning and the recommendation of the ANC.

18. The Capitol Hill Restoration Society, Inc. (CHRS), by letter dated May 22, 1984, reported that at its membership meeting on May 14, 1984, the Society had voted to support the application on the grounds that there exist exceptional practical difficulties upon the owner of this property in the strict application of the Zoning Regulations. The CHRS was of the opinion that the applicant's problem arose from the fact that the fourth floor of the existing building has a number of openings, constituting a kind of mezzanine above the third floor. In order to obtain the use of the fourth floor in view of existing fire regulations, these holes need to be filled in. The structure is currently nonconforming as to floor area ratio as it was erected prior to the enactment of the Zoning Regulations. Thus, the filling in creates an addition to the nonconformity by increasing the FAR by some 1000 square feet, or less than two percent over the existing nonconformity. Under these unique circumstances, the CHRS was of the opinion that the applicant had made a compelling case for the granting of this requested variance. The Society expressed the hope that the development of this additional office space in an existing commercially zoned area, only steps from the Eastern Market Metro stop, may possibly divert some of the existing commercial uses currently being carried on in violation of the Zoning Regulations in residentially zoned

parts of Capitol Hill. The Board concurs with the reasoning and the recommendations of the CHRS.

19. There was no opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking area variances, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographic conditions. The Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicant has met this burden of proof in showing a practical difficulty inherent in the property. The three existing openings in the floor of the fourth level of the subject structure are in violation of the D.C. Fire Code and the D.C. Building Code. The three openings must be closed in order to provide a fire resistant barrier between the third and fourth floors of the existing structure. This creates a practical difficulty in complying with the D.C. Fire Code and Building Code. This practical difficulty is inherent in the historic nature of the existing structure and necessitates a variance from the strict application of the Zoning Regulations.

The Board further finds that the granting of these area variances will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. Granting the proposed relief will permit a reasonable use of private property and has the support of neighborhood organizations. Accordingly, it is hereby ORDERED that the application is GRANTED.

VOTE: 3-0 (William F. McIntosh, Lindsley Williams and Charles R. Norris to grant; Douglas J. Patton and Carrie L. Thornhill not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JUL 24 1984

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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