GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15079 of the Condor Corporation, pursuant to 11 DCMR 3107.2, for a variance from the minimum lot area requirement of 900 square feet per unit (Sub-section 401.3) for the conversion of an existing structure into an eight unit apartment house in an R-4 District at premises 1301 Fairmont Street, N.W., (Square 2860, Lot 29).

HEARING DATE: July 27, 1989
DECISION DATE: July 28, 1989

FINDINGS OF FACT:

1. The property is located at the northwest corner of the intersection of 13th and Fairmont Streets and is known as premises 1301 Fairmont Street, N.W. It is zoned R-4.

2. The property is rectangular in shape with a frontage of 49 feet along Fairmont Street and a depth of 104.625 feet for a lot area of approximately 5,126.6 square feet.

3. The site is currently improved with a three story plus basement brick row dwelling which was constructed in 1910. The existing structure is vacant and in need of rehabilitatiion.

4. The area surrounding the subject site is predominantly developed with row dwellings and apartment buildings. There is a church across 13th Street to the east of the site.

5. The property was occupied as an eight unit apartment building from approximately 1947 until 1979. The building has remained vacant since that time. The applicant purchased the property two years ago. At the time of purchase, the building was layed out and equipped with kitchen and plumbing equipment for an eight unit apartment building. The applicant proposes to renovate the building and re-establish its use as an eight unit apartment building.

6. The Zoning Regulations provide that a building existing on May 12, 1958 in the R-4 District may be converted to apartments provided that a minimum lot area of 900 square feet per until is provided.

7. The subject lot contains approximately 5,126 square feet of lot area. The minimum lot area required for conversion of the building to an eight unit apartment is 7,200 square feet. A variance from the minimum lot area of approximately 2,074 square feet is required.

8. The applicant proposes to provide four on-site parking spaces. Three of the parking spaces will measure nine by nineteen feet. The fourth parking space will accommodate a compact car.

9. Access to the proposed parking spaces will be from the ten foot wide public alley immediately north of the subject site. The topography of the site is substantially higher than the level of the public alley thereby necessitating substantial excavation and regrading of the proposed parking area for direct access from the public alley onto the site. The level of the proposed parking would locate the tops of vehicles parking on site approximately two feet below the lowest tier of windows of the subject structure.

10. The property is abutted by public rights of way to the north, east and south. The adjacent lot to the west is improved with a row dwelling.

11. The applicant testified that the existing interior configuration of the structure would make it difficult to reduce the number of units because of the location of load bearing walls, stairs and hallways.

12. The Office of Planning (OP), by memorandum dated July 19, 1989, recommended that the application be denied. The OP was of the opinion that the proposed density would be excessive and likely to impact the surrounding area adversely. The Board does not concur with the recommendation of OP.

13. Advisory Neighborhood Commission (ANC) 1B, by letter dated July 20, 1989, and representatives at the public hearing, recommended that the application be denied for the following reasons:

a. The failure of the applicant to establish any exceptional or undue hardship preventing the use of the property in accordance with the R-4 zoning.

b. The increase in residential density would exacerbate parking problems in the area.

c. The failure of the applicant to attend the ANC meeting to discuss to proposed project.

14. The Columbia Hights Neighborhood Coalition, by letter dated July 27, 1989 and by representative at the public hearing, opposed the application based on the following:

a. The block has been plagued by drug and prostitution-related activities for the past year.

b. The proposed units are small and would be difficult to rent.

c. There is inadequate parking provided to serve eight apartment units.

d. The Coalition has some question as to the legal standing of the applicant corporation in the District of Columbia.

15. In addressing the issues and concerns of the ANC and the opposition, the Board finds as follows:

a. The applicant is seeking an area variance, not a use variance. The burden of proof requires a showing of an exceptional condition of the property which creates a practical difficulty upon the owner in complying with the Zoning Regulations. The Board finds that the applicant has made such a showing as set forth in the conclusions of law and opinion.

b. The structure has housed the proposed number of units, with no on-site parking provided, in the past with no evidence of adverse impacts on the area.

c. The economic viability of leasing the units is not an issue before the Board. However, the Board notes that the applicant proposes no changes in the previous lay out of the units as they existed prior to his purchase of the site.

d. The Zoning Regulations requires the applicant to provide one parking space per three apartment units. The applicant is providing four on-site parking spaces as shown on Exhibit No. 10 of the record.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking an area variance, 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 inherent in the property itself. The Board further must find that the granting of the application will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan.

The Board concludes that the applicant has met the requisite burden of proof. The Board concludes that the subject structure was built prior to the adoption of the 1958 Zoning Regulations. The premises were used as an eight unit apartment from 1947 to 1979. A practical difficulty exists in trying to reduce the existing number of units to conform with the requirements of the Zoning Regulation. The applicant is unable to increase the size of the lot in order to comply with the Zoning Regulations because of public rights-of-way on three sides and the adverse ownership of the property to the west.

The Board further concludes that the required relief can be granted without causing substantial detriment to the public good. The additional residential units will add to the city's housing supply in furtherance of the policies of the city. The building contained eight units prior to the adoption of the 1958 Zoning Regulations with no on site parking provided. The provision of four on-site parking spaces will reduce the potential for adverse traffic impacts. The Board is further of the opinion that the relief can be granted without substantially impairing the intent, purpose and integrity of the Zone Plan. Accordingly it is ORDERED that the application is hereby GRANTED.

VOTE: 3-0 (William F. McIntosh, Charles R. Norris and Paula L. Jewell to grant; Carrie L. Thornhill not voting, not having heard the case).

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

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director

FEB 28 1990

FINAL DATE OF ORDER: _____

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "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.

15079order/BHS13

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION No. 15079

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated FEB 28 1990, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Dorothy Brizill
1327 Girard Street, N.W.
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Harry Flores
3317 - 16th Street, N.W.
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Stanley J. Mayes, Chairperson
Advisory Neighborhood Commission 1-B
519 Florida Avenue, N.W.
Washington, D.C. 20001

EDWARD L. CURRY
Executive Director

DATE: FEB 28 1990