GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15161 of Shamsher Singh, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Sub-section 320.3) to allow conversion of a single-family row dwelling into a 5-unit apartment house in an R-3 District at premises 2111 S Street, N.W., (Square 2532, Lot 44).

HEARING DATE: October 25, 1989
DECISION DATE: December 6, 1989 & January 3, 1990

FINDINGS OF FACT:

1. The property is located on the north side of S Street between Connecticut Avenue and Phelps Place and is known as premises 2111 S Street, N.W. It is zoned R-3.

2. The property is rectangular in shape with a frontage of twenty feet along S Street and a depth of 85 feet for a total lot area of 1,700 square feet.

3. The site is currently improved with a four-story plus basement single family row dwelling.

4. The area surrounding the subject site contains a mixture of uses including row dwellings, office buildings, embassies, apartment buildings and various small commercial establishments.

5. The applicant proposes to renovate the existing building and convert it for use as a five-unit apartment building. The facade of the structure will be maintained with minimal cosmetic treatment. The interior of the building will be gutted and new floors, ceilings, plumbing and electrical systems, individual kitchens and bathrooms will be installed. In addition, the applicant proposes to extend the partial fourth floor to the rear of the building.

6. The applicant testified that the proposed apartments will be occupied by family members rather than sold in the open market.

7. There is one parking space at the rear of the site. The property is located approximately one-half block from the intersection of Connecticut and Florida Avenues and approximately two blocks from the Dupont Circle Metro Station. Residential permit parking is in effect on the subject block.

8. The applicant testified that the proposed renovation and conversion would be beneficial to the neighborhood in that an existing deteriorated building would be restored in keeping with surrounding buildings.

9. The Office of Planning, by memorandum dated October 18, 1989, recommended that the application be denied. The OP was of the opinion that the applicant has not met the requisite burden of proof and that the requested relief is excessive for an R-3 District.

10. Advisory Neighborhood Commission (ANC) 1D, by letter dated October 11, 1989, opposed the granting of the application. The ANC did not identify specific issues and concerns relative to the application.

11. Several nearby property owners appeared at the public hearing in opposition to the application. The opposition was generally based on the following:

a. The applicant has failed to properly maintain the structure; allowed the accumulation of trash and debris; and allowed pest infestation including roaches, rats and pigeons.

b. The property has been used as a rooming or boarding house in the past without the issuance of a valid certificate of occupancy.

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

a. The concerns relative to the failure of the applicant to maintain the property in a safe and sanitary manner and the alleged illegal use of the premises without the proper approvals are beyond the scope of the Board's jurisdiction and should be addressed to the to the proper enforcement authorities for appropriate reviews and action. The Board, however, wishes to remind the applicant of his responsibility to comply with all appropriate D.C. Codes and Regulations.

b. The concerns relative to the extension of the fourth floor are not properly before the Board at the present time. The existing structure exceeds the maximum lot occupancy of sixty percent. 11 DCMR 2001.3 precludes enlargements or additions to such a nonconforming structure. If the applicant desires to proceed with such an addition, the

applicant must present his plans for appropriate review and seek any variance relief deemed necessary by the Zoning Administrator.

c. The Board notes that the standards for the granting of a use variance have been addressed by the Court in several instances including Palmer vs. The BZA, 287 A.2d 535 (DC app. 1982) and the Clerics of St. Viator vs. the BZA (320 A.2d 291,294 (DC app. 1974.) The Court has held that a use variance is proper when it has been shown that a property meets the criteria set forth in 11 DCMR 3107.2 and also when it has been shown that a reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations. The Board must apply those standards as appropriate given the circumstances relative to each specific case. The Board further notes that the applicant bears the burden of proof.

13. Based on the evidence submitted by the applicant, the Board finds no probative evidence that the property is affected by any unique physical aspect or other extraordinary situation. The Board is further not persuaded that the owner would suffer undue hardship if the Zoning Regulations are strictly applied. The property is currently used as a single family dwelling as permitted by the zone district in which it is located. No evidence has been presented, other than the applicant's desire to provide appropriate space for family members, to show that the use of the property as a single family dwelling cannot reasonably be continued.

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 a use variance, the granting of which requires substantial probative evidence of an undue hardship upon the owner caused by an exceptional or extraordinary condition inherent in the property itself. The Board concludes that the applicant has not met the requisite burden of proof.

The Board concludes that no undue hardship upon the owner exists as evidenced by the current use of the property as a single family dwelling. Further, the Board concludes that the applicant's request is based on personal reasons. No probative evidence was offered that the property could not reasonably be put to a use permitted in the R-3 District.

The Board further concludes that the relief cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-1 (Carrie L. Thornhill, William F. McIntosh and Paula L. Jewell to deny; Charles R. Norris opposed to the motion).

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

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: JUN 18 1990

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."

15161order/LJP62

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION No. 15161

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 JUN 18 1990, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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EDWARD L. CURRY
Executive Director

DATE: JUN 18 1990