Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING -- July 19, 1972

Application No. 11186 Potomac Electric Power Company, appellant.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and carried with the absence of Mr. Scrivener, the following Order of the Board was entered at the meeting of September 26, 1972.

ORDERED:

That the application for a variance from the lot area requirement of the R-4 District to permit construction of three (3) townhouses each with a rental unit at 1115-23 G Street, S. E., part of Lot 79, Square 995, be DENIED.

FINDINGS OF FACT:

1. The subject property is located in an R-4 District, which district permits townhouses and flats as a matter of right.

2. The property is presently unimproved.

3. Appellant proposes the construction of three (3) buildings, each with a rental unit.

4. It is proposed that each building will be sold and each owner thereof may use the first floor for a rental unit and the second and third floors for the owner's residence or vice versa.

5. The houses are to be constructed so that the owner may, at his option, remove a partition on the first floor to permit the use of the entire structure as one dwelling unit.

6. Each proposed lot has a lot width of 20.67 feet and each contains a lot area of 1,791.46 square feet.

7. The Board, in BZA Application No. 10885, granted permission for the construction of four (4) townhouses, each containing a rental unit and each having a lot width of 16 feet. However, due to the builder's inability to acquire two additional feet from the owner of the property, the applicant amended his request to seek four (4) townhouses, each with 15.5 foot widths, which amended request was denied by the Board.

8. In the Order of the Board in Application No. 10885, the Board provided that, "In the instant case, the Board feels that applicant should have the right to file another application for three townhouses on the subject property since this would be considered as a modification of the original application which requests four townhouses."

9. Upon the receipt of the Order in Application No. 10885, applicant filed the instant application seeking permission to construct the three (3) townhouses, each containing a rental unit. The variance sought is an area variance of the three lots.

OPINION:

The Board in Application No. 10885 in allowing appellant to file another application for three (3) townhouses does not construe its action for appellant to build three (3) townhouses (row-dwellings) to include a rental unit. The recent court decision Palmer v. Board of Zoning Adjustment, Application No. 5884 concludes that granting of a variance is improper where there is no showing of exceptional situation and undue hardship. It is clear that the owner can develop this property with single family, semi-detached or row-dwellings without a rental unit in a manner authorized by the Zoning Regulations. The Board has recognized the uniqueness of the row type flat with a rental unit in R-4, 1,800 square foot lot, and since the land is relatively flat and can be developed with little difficulty, it must be considered that this action affects all R-4 use districts.

The Board finds it unrealistic to require 3,000 square feet for a single family house and then require 900 square feet for a unit in a multi-dwelling. It is obvious that the Regulations are designed to provide a selection of housing and building types and where a flat is permitted, the Regulations spell out clearly that a minimum of 4,000 square feet is required. To alter the Regulations in any way other than that way must require an area variance and approval by the Board upon request. The assumption, because of past Board action, by the attorney and Zoning Administrator, that the 1,800 square foot minimum for flats or townhouses with rental units is clear in the Regulations, should be denied. The Regulations have no such provision. The developer has the unmistakable option to convert if he wants to as provided by the Regulations. However, the structure has to be built first, and land in units of 900 square feet available. The cost for conversion, in terms of meeting Building Code and other ordinances would have a dampening affect on new single family structures being converted to multi-dwellings. The above factors limit the possibility of new structures being converted and rather supports the purpose for which the R-4 use district was intended, which is to allow for conversion of existing structures in hopes of stabilizing existing one-family dwellings.

However, the Board believes that limiting flats to 4,000 square feet of lot area as required by the Regulations is in the public interest and should help to limit overcrowding and prolong stability in established residential neighborhoods.

We are of the opinion that appellant has not proved a hardship within the meaning of the variance clause of the Zoning Regulations and that a denial of the requested relief will not result in peculiar and exceptional practical difficulties and undue hardship upon the owner.

Further, we hold that the requested relief can not 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.

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

ATTESTED: George A. Grogan

By: _____

GEORGE A. GROGAN
Secretary of the Board

February 13, 1973