

Before the Board of Zoning Adjustment, D. C.

Appeal No. 11581 and Application No. 11511 consolidated.

Appeal of Eleanor Ahrens from a determination of the Zoning Administrator made on January 7, 1974, that the owner of the premises 3026 O Street, N. W., Lot 120, Square 1242 does not have the right to use the subject premises as a flat and an application requesting a variance from the use provisions of the R-3 Zone to permit a flat at the said premises.

HEARING DATE: April 17, 197~~8~~⁴
EXECUTIVE SESSION: April 23, 197~~8~~⁴

FINDINGS OF FACT:

1. The subject property is located in an R-3 single-family residential zone, created for the purpose of maintaining a family life environment, Section 3103.1 of the regulations.

2. The subject property is improved with a brick residence containing two liveable floors, a basement and a third floor suitable for attic use.

3. The applicant presently occupies the first two floors of the existing structure and rents the basement.

4. The applicant purchased the subject property for a purchase price of \$104,500. Included in the sales contract is a provision assigning an existing lease to the basement apartment to the applicant at the time of settlement.

5. After purchase of the subject property, the applicant applied for and was issued a building permit (No. B-220487) issued October 4, 1973. The permit states that the present use of the building is a single-family dwelling and that the proposed use is the same.

6. The existing structure on the subject property was constructed in 1903 as a flat when no Zoning Regulations existed in the District of Columbia.

7. On June 24, 1924, a Zoning Regulation for the District of Columbia became effective on the subject property, which zoned the property B Restricted Residential use and provided that no building thereafter constructed could be erected for use as an apartment house or flat. At this time the use of this property as a flat was non-conforming.

8. On May 12, 1958, the subject property was zoned "R-3" by the present Zoning Regulations.

9. After May 12, 1958, the effective date of the present Zoning Regulations, this non-conforming use was not registered by Colonel Albert M. Johnson, owner of the property, as required by Section 7110 of the Zoning Regulations.

10. Shortly after 1950, the owner, Colonel Albert M. Johnson, converted the residence to single-family use by his own family. At this time, Colonel Johnson, removed the second floor kitchen facilities; capped off the water, waste and gas lines and removed the sink, gas range and refrigerator. The utilities remained capped off and it was necessary to remove plaster to uncover the lines which Colonel Johnson capped.

11. Colonel Johnson and his family occupied the house as a single-family residence for more than eleven years until 1964.

12. The Board finds that Colonel Johnson abandoned his non-conforming use.

13. Over objection of opponents, because the Colonel was not present for cross-examination an affidavit of Colonel Johnson was presented at the hearing by the applicant. This affidavit included the following statement;

"While I intended to use the property myself for single-family purpose, I did not intend to preclude the future use of the premise as a flat."

14. The conversion to single-family use by Colonel Johnson interrupted the prior non-conforming use.

15. Mrs. Ahrens was present at the hearing and testified that she proposes to combine the basement and first floor of the subject property into one unit and to create a second unit on the second floor.

16. The applicant requests a variance from the use provisions of the R-3 Zone to permit a flat on the subject property as an alternative conditioned on the Board's decision of the instant appeal.

17. The applicant's hardship is based on the grounds that strict application of the Zoning Regulations would cause an economic loss to her by reason of her large financial expenditure in purchasing this property thinking, that it could be used as a flat.

18. The applicant also stated that because of the large size of the house on the subject property, it is impractical for the single family use by her and her son.

19. The District of Columbia tax office records indicate that the subject property is coded and taxed as a two-family dwelling, however, tax coding has no bearing on the use provisions of the Zoning Regulations.

20. Evidence of record indicates that the neighborhood wherein the subject property is located is composed of both single-family dwellings and apartment uses.

21. Over objection of the applicant, the opposition submitted copies of certificates of registration of non-conforming use filed by owners of property in the immediate vicinity of the applicant. These certificates were filed after public hearing, during which time, the record was held open for submission of proposed findings of fact and conclusions of law by all parties to the case.

22. Because of the number of multiple family dwellings existing in the neighborhood of the subject property, a parking problem exists.

CONCLUSIONS OF LAW:

I. Appeal No. 11581

Based upon the above Findings of Fact, the Board concludes, that because the use of the subject property was converted from a multiple dwelling to a single-family dwelling for a period of eleven years and that because the prior non-conforming use was not registered after the effective date of present zoning regulations, as required by Section 7110 of the regulations, and that the Zoning Administrator was correct in his determination that the applicant is not allowed the use of the subject property as a legal non-conforming use and that the applicant must be granted a variance by this Board to establish a legal non-conforming use on the subject property.

II. Application No. 11511

Based upon the above Findings of Fact, the Board concludes, that the applicant has not proved the existence of an extra ordinary or exceptional situation or condition on the subject property or undue hardship upon the owner of this property caused by strict application of these regulations. The Board is aware of the misconception of the applicant at the time of purchase of the subject property, however, the Board is of the opinion that applicant could have by research and diligent inquiry as to the legal status of this property avoided the situation of which she now complains.

The Board concludes, that because the applicant has not proved the existence of a hardship as required by Section 8207.11 of the regulations and because of the objections stated by the opposition regarding the increase of density to the neighborhood and the additional parking burden which would be created, as well as the fact that the R-3 District does not permit conversions from single family use, that the granting of the subject application would be detrimental to the public good and substantially impair the intent, purpose and spirit of the zone plan as embodied by the Zoning Regulations and Map.

Application No. 11581/11511

Page 5

ORDERED:

That the Zoning Administrator be upheld in his determination to withhold the issuance of a Certificate of Occupancy for the use of the subject property as a flat; and that the requested variance be DENIED.

VOTE:

Appeal No. 11581, 4-1 (Mr. Scrivener dissenting)

Application No. 11511, 5-0

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

ATTESTED BY:



JAMES E. MILLER
Secretary to the Board

FINAL DATE OF ORDER:

8/6/74

BEFORE THE BOARD OF ZONING ADJUSTMENT, D. C.

Appeal Nos. 11511-11581 of Eleanor Ahrens from a determination of the Zoning Administrator made on January 7, 1974, that the owner of the premises 3026 "O" Street, N. W., Lot 120, Square 1242 does not have the right to use the subject premises as a flat and in the alternative an application requesting a variance from the use provisions of the R-3 zone to permit a flat at the said premises.

HEARING DATE: April 17, 1974

EXECUTIVE SESSION: April 23, 1974, & August 27, 1974

ORDERED:

That the applicants post hearing motion in the nature of a reconsideration, rehearing or reargument fails for the lack of four affirmative votes.

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

ATTESTED BY:



JAMES E. MILLER
Secretary to the Board

FINAL DATE OF ORDER: **SEP 04 1974**