Before the Board of Zoning Adjustment, D. C.

Appeal No. 11998, of Stephen M. Truitt, et. al., pursuant to Sections 8102 and 8206 of the Zoning Regulations, from a determination made by the Zoning Administrator approving a subdivision on June 25, 1975, in violation of Section 1302.2 of the Zoning Regulations of Lot 987, Square 1280, at the premises 3238 R Street, N. W.

HEARING DATE: August 20, 1975

DECISION DATE: September 5, 1975

FINDINGS OF FACT:

1. The subject property is located in an R-1-B Zoning District, excepting a small portion of (tax) lot 997 which sits in an R-3 Zone. There are three (3) buildings located on (tax) lot 997: a main house and two (2) additional structures known as the "guest house" and "carriage house" respectively. (Record) lot 96 is undeveloped.

2. The appeal, as filed, sought a determination that the action of the Zoning Administrator in approving the subdivision of (tax) lot 996 violated Section 1302.2 of the Zoning Regulations. The appellants based their appeal on the contention that, by virtue of the approved subdivision, new lots were created which do not meet applicable zoning requirements for side and rear yards.

3. In April of 1975, Mr. James Fahey, Zoning Administrator, advised Mr. Dunn that, in his opinion, occupancy of the accessory buildings (guest house and carriage house) on (tax) lot 997 by tenants would constitute an improper use of those structures. Since the two (2) buildings were then occupied by tenants, Mr. Fahey declined to subdivide any of the property in question on the basis of his interpretation of Section 5 (d) of the Subdivision Regulations. (Tr. 228).

4. Section 5 (d) of the Subdivision Regulations provided as follows:

> The plat of subdivision shall contain a certification by the Zoning Administrator, Department of Licenses and Inspections, D. C. that in his judgment subdivision is not in

> violation of any Zoning Regulations and that the remaining parts will comply with said regulations.

5. Subsequent to Mr. Fahey's determination, Mr. Reid A. Dunn, owner of the property, requested a reconsideration of the subdivision proposal, on the grounds that the accessory buildings were no longer occupied and therefore there was no use violation (tax) lot 997 to impede subdivision of (tax) lot 996. (Tr. 208, 211).

6. Mr. Fahey inspected the property at that time and determined that the carriage house and the guest house were accessory buildings, existing and used as much. (Tr. 218-19). Under the Zoning Regulations, an accessory building is defined as:

> A subordinate building located on the same lot as the main building, the use of which is incidental to that of the main building.

7. Furthermore, there was no intention on the part of Mr. Dunn to use these buildings as principal dwellings unless and until he received variances from this Board to do so or could in some other manner achieve compliance with the Zoning Regulations to meet that purpose (e.G., relocation of the the buildings). (Tr. 234-35.)

8. Mr. Fahey also sought the advice of Corporation Counsel in his interpretation of Subdivision Regulation Section 5(d) . Mr. Fahey was advised by Corporation Counsel that Section 5 (d) mandates only that Section 1302.2 of the Zoning Regulations be considered in ruling on a proposed subdivision. Mr. Fahey was advised that any existing use violation should be noticed as such (i.e., by posting a notice on the premises), but should not affect a determination as to the property of a subdivision plan (Tr. 208).

9. Section 1302.2 of the Zoning Regulations of the District of Columbia requires that:

> Where a lot is hereafter divided, the division shall be effected in such manner as not to violate provision of these regulations for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio percentage of lot occupancy, parking spaces, or loading berths applicable to said lot or any lot created.

10. The minimum lot requirement in an R-1-B Zone is five thousand (5,000) square feet (Section 3301.1). The effect of the proposed subdivision was to create (record) lot 96 consisting of 5328.85 square feet; the area of (tax) lot 997 is approximately thirty-four thousand (34,000 square feet. (Tr. 216, 217).

11. The minimum lot width required in an R-1-B Zone is fifty (50) feet (Section 3301.1). The effect of the subdivision was to create (record) lot 96 with an average width of 53.45 feet; (tax) lot 997 has an average width of 172.5 feet. (Tr. 216, 217).

12. The minimum side yard required in an R-1-B Zone is eight (8) feet (Section 3305.1). (Tax) lot 997 has a west side yard of 51.9 feet and an east yard of 28.65 feet. Since there is no structure located on (record) lot 96, side yard requirements need not be considered.

13. The minimum rear yard required in an R-1-B Zone is twenty-five (25) feet (Section 3304.1). (Tax) lot 997 has an average rear yard of 114 feet. Since there is no structure located on (record) lot 96, rear yard requirements need not be considered. (Tr. 217).

14. Courts are not required in a residence district and none were provided prior to or subsequent to the subdivision. (Tr. 217).

15. There are no further open space requirements (e.g., front yard, set-back) which affect this property, either in its subdivided or original state. (Tr. 217).

16. There is no prescribed floor area ratio for a dwelling located in an R-1-B Zone. (Section 3302.1).

17. The maximum percentage of residential lot occupancy in an R-1-B Zone is forty percent (40%). (Section 3303.1). The percentage of lot occupancy on (tax) lot 997 is 13.34% or 4,609.15 square feet. Since there is no structure located on (record) lot 96, percentage of lot occupancy need not be considered. (Tr. 218).

18. There are no loading berth requirements applicable to single-family residences. (Section 7306.14).

19. There is no parking space required by Section 7202.1 for the main building located on (tax) lot 997 since the structure was erected prior to the adoption of the regulations; there is, however, one space provided. Since there is no dwelling located on (record) lot 96, provision of a parking space need not be considered. (Tr. 218).

20. On June 25, 1975, the Zoning Administrator approved the subdivision of (tax) lot 996. This lot was subsequently recorded in the Surveyor's Book as (record) lot 96.

21. The subdivision approved by the Zoning Administrator created two lots, one unimproved lot and a lot improved by a principal building, a guest house, a two-story garage, and a carriage house.

22. The guest house, garage, and carriage house are accessory buildings, originally constructed to serve the principal building, long before the height, area and bulk regulations of these regulations were enacted.

23. The improved lot resulting from the subdivision in question is the source except it has 5328.85 less lot area and forty-eight (48) feet less lot width.

24. At its Executive Session of August 6, 1975, this Board granted the application (No. 11951) of Reid A. Dunn and Christian Dutilh for variances from certain Zoning

Regulations pertaining to rear and side yard requirements. The property under consideration in that application was same parcel described as (tax) lot 997 in the instant appeal. The effect of the Board's ruling in Application No. 11951 was to permit use of the accessory buildings (guest house and carriage house) on (tax) lot 997 as principal dwellings by approving variances from the strict application of Sections 3304.1 and 3305.1 of the Zoning Regulations.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Board is of the opinion that the Zoning Administrator's action in approving the subdivision of (tax) lot 996 was entirely proper and in accordance with the applicable Zoning Regulations of the District of Columbia, because at the time that the subdivision in issue was approved, the effect of such was only a reduction in the lot area and lot width of lot 987 and the creation of an unimproved lot, both complying with the regulations.

The Board concludes that the lot created by the subdivision (record) lot 96) conforms in all pertinent respects to the requirements of Section 1302.2 of the Zoning Regulations.

The Board also finds that the outbuildings (carriage house and guest house) located on the abutting property (now (tax) lot 997) are accessory buildings to which no side or rear yard requirements are applicable under regulations. (Tax) lot 997, therefore, conforms in all pertinent respects to the requirements of Section 1302.2

ORDERED: That the act of subdivision of the Zoning Administrator in the above matter is hereby affirmed.

VOTE: 3-1-0 (Mr. Scrivener not present, not voting, Lilla Burt Cummings, Esq., dissenting of Board in Case No. 11951 mooted the issues in this case)

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

ATTESTED By: Jas E. Miller
JAMES E. MILLER
Secretary to the Board

FINAL DATE OF ORDER: October 30, 1975

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.