

BEFORE THE BOARD OF ZONING ADJUSTMENT, D. C.

Application No. 12216 of William and Martha Engstler, pursuant to Sub-section 8207.11 of the Zoning Regulations, for a use variance from the provisions of Section 3102, to permit a flat in the R-2 District (first floor-one unit, second floor-one unit) at 4207 Ingomar Street, N.W. (Lot 3, Square 1665).

HEARING DATE: November 17, 1976

DECISION DATE: November 30, 1976

FINDINGS OF FACT

1. The subject property is located in a R-2 District.
2. The property was constructed in 1932 in a Residential 40 A District which permitted the construction of single family detached dwellings. The building permit was issued for the construction of a single family dwelling.
3. The property has been used as a two unit flat since at least 1936.
4. The property was purchased by applicants in 1963 and when purchased the top floor was occupied by a tenant who remained in residence until 1973.
5. Applicants became aware of the non-conforming use when an attempt to register under rent control disclosed that the upstairs flat did not have the required occupancy permit and filed for the instant variance.
6. Access to the second floor flat is available from an exterior side entrance and by an interior doorway from the kitchen both connected to the stairway.
7. The kitchen wall adjacent to the stairwell is load bearing. Stairs descend from the first floor to the basement directly under the stairway up to the second floor flat.

8. No similar use variances have been granted in the immediate neighborhood and no similar non-conforming uses are known to applicants.

9. Opposition to the variance was expressed at the hearing by two neighborhood property owners and a petition bearing numerous signatures in opposition was presented. Neither witness was aware of the non-conforming use prior to the application.

10. Several property owners immediately adjacent to the subject property petitioned in favor of approval.

11. The precise date the property became non-conforming is unknown, the second floor flat originally was used as a mother-in-law suite. The second floor flat appears to have been tenant occupied since at least 1952.

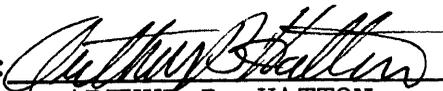
12. Advisory Neighborhood Council 3E, in response to this application, opposed any variance affecting the area's zoning.

CONCLUSIONS OF LAW AND OPINIONS

Applicants seek a use variance which requires a showing of exceptional and undue hardship bordering on a taking. The Board is of the opinion that, while applicants have acted in good faith and will suffer the loss of rental income, they have failed to make the required showing. The Board is further of the opinion that the granting of the variance would adversely affect the neighborhood. It is therefore ORDERED that the application be DENIED.

VOTE : 4-0 (Lilla B. Cummings, Esq., William F. McIntosh,
William S. Harps and Leonard L. McCants, Esq.)

ATTESTED BY:


ARTHUR B. HATTON

Secretary to the Board

FINAL DATE OF ORDER: 4-20-77