

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12628, of Miriam K. Carliner, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the lot area and lot width requirements (Sub-section 3301.1) to permit the construction of a single family dwelling in the R-1-B District at the premises 5240 Reno Road, N.W. (Square 1753, Lots 813 & 814).

HEARING DATES: April 19, June 21, & July 19, 1978
DECISION DATE: September 6, 1978

FINDINGS OF FACT:

1. The Board, for good cause shown, waived Section 3.33 of the Supplemental Rules of Practice and Procedure before the Board which requires that an affidavit, attesting to the fact that the subject property was posted, be filed five days before the scheduled public hearing. The affidavit was filed only one day before the April 19th hearing. The property was posted on April 6, 1978, as required.
2. The subject lots 813 and 814 in Square 1753 adjoin each other and front on the west side of Reno Road between Ingomar and Jenifer Streets, N.W. They are in an R-1-B District. Lot 813 is abutted on the west by a twelve foot alley which also abuts the rear west line of lot 814. Lot 814 is abutted on the east by lot 32. The alley does not abut lot 32. Lots 813 and 814 have a combined width of forty-eight feet and a combined area of approximately 4,000 square feet.
3. The twelve foot alley adjoining lot 813 and part of lot 814 serves one side of the 3900 block of both Jenifer and Ingomar Streets. The alley system in this neighborhood, because of the narrow streets, is used for trash pick-ups, service and deliveries and is the only access to some garages.
4. For many years until November 1977, Lots 32, 813 and 814 were held in single ownership by prior owners as one parcel used for residential purposes. Lot 32 was and is improved by a one-family detached dwelling at 5240 Reno Road, N.W. Lots 813 and 814 were used as the side yard for the said dwelling, and are improved with a two-car garage and concrete driveway which fronts on Reno Road straddling both lots, which is being used by the occupants of the house on Lot 32. Both the house and garage were erected prior to 1957.

5. Lot 32 was created in a subdivision of lots made in August 1912 by the Chevy Chase Land Company of Montgomery County, Maryland. The boundaries of Lot 32 have remained unchanged since that subdivision was effected. Lots 813 and 814 came into existence before 1920 as a result of the movement westward of an alley which originally abutted lot 32. The alley relocations had the effect of increasing the land usable by the occupants of the adjacent lot 31 across the alley.

6. A sales contract covering Lots 813, 814 and 32 between the estate of Mrs Graham (owner-occupant for 20 or 30 years) and a purchaser was assigned to Miriam K. Carliner in September 1977. Applicant's counsel stated to the Board that at settlement in October or November 1977, upon the instruction of Miriam K. Carliner, Lots 813 and 814 were conveyed to her and Lot 32 was conveyed to Mrs. Carliner's daughter and her daughter's husband. Deborah Carliner and Robert Remes, who now reside at 5240 Reno Road, N.W. Vosney Construction Company is the contract purchaser of the lots retained by Miriam K. Carliner. The purchaser was aware at the time of purchase that the three lots had been used as one and there was no representation that they were buildable lots.

7. The applicant proposes to construct a two story colonial house, built in frame with brick that will face Reno Road. It will contain three bedrooms and two and one-half bathrooms. The subject garage would be razed. A circular driveway would be constructed in front of the present improvement on lot 32.

8. The applicant seeks variances from the required lot area of 5,000 square feet and from the required fifty foot minimum width in order to build on Lots 813 and 814 a single-family residence for resale. The lots have a combined area approximately twenty per cent less than that required in an R-1-B District. Lots 813 and 814 are two feet short of the required minimum width for the R-1-B District.

9. Sub-section 3301.3 of the Zoning Regulations allows the construction of the proposed house on a lot in the R-1-B District provided that the lot has remained under the same ownership since November 1, 1959, has at least eighty per cent of the area and width of lot as specified under Sub-section 3301.1, is unimproved, and does not adjoin another unimproved lot under the same ownership. The applicant's proposal complies with all but one of the above provisions. There is a deteriorated frame two car garage and driveway on the subject property, which make the property an improved lot. The property therefore, does not qualify under Sub-section 3301.3, and the variances are required in order to build on the property.

10. The subject property is in Chevy Chase Heights, a subdivision recorded in 1910. Characteristics of this subdivision are its spaciousness and its many old houses and trees, particularly along Reno Road with its small parks. Many single-owner properties in the subdivision, whether one large lot or several more narrow lots, are more than 10,000 square feet; many others having less than 10,000 square feet are much larger than the 5,000 square feet presently required for the R-1-B District.

11. The combined area of Lots 32, 813 and 814 exceeds 9600 feet. Lots 813 and 814 respectively are 86.40 and 87.66 feet in depth with a twenty foot building restriction line. They are flat and have many trees. Lots 813 and 814 are generally rectangular in shape except for the rear lot line formed by the alley behind them. Their depth is comparable to that of other lots in the wedge-shaped portion of Square 1753 lying between Reno Road and Ingomar Street, in which they are located. There are in the neighborhood a number of narrow lots which are part of a larger single-owner property.

12. Lots 813 and 814 are approximately thirty-five feet southeast of the intersection of Reno Road, a minor arterial and Jenifer Street. The paved width of Reno Road is twenty-four feet wide in this block. Parking in this block is available only on the west side and then only during non-rush hours. The blocks of Jenifer Street immediately east and west of the subject property are twenty six feet from curb to curb. The 3900 block of Ingomar Street around the corner to the south of the subject property, but not abutting it, is twenty six feet from curb to curb. Jenifer and Ingomar Streets on these blocks are subject to the two hour residential permit parking restrictions. Parking is permitted on both sides of these Streets.

13. The Board at its public meeting of May 4, 1978 requested that this application be referred to the Municipal Planning Office for its special review and report on the following designated issues:

- a. The impact the granting of the variances for the subject sub-standard lots would have on property in the neighborhood.
- b. The number of other developable sub-standard lots that are in the immediate neighborhood.
- c. The number of lots there are containing over 10,000 square feet which could be subdivided to allow for construction of additional housing.

The Municipal Planning Office, by report dated June 5, 1978, stated that it had selected a study area that was bounded by Military Road to the north, 38th Street to the east, Fessenden Street to the south and 41st Street to the west. The study reported that:

- a. There were forty-three lots with over 10,000 square feet of land area located within the study area. Thirty-nine of these lots have lot widths over the fifty feet minimum requirement for the R-1-B District. In most cases these lots could be subdivided as a matter-of-right to allow for the construction of an additional dwelling.
- b. There are located in the study area approximately eleven Sub-standard lots that could be developed in accordance with the provisions of sub-section 3301.3.
- c. There are approximately four sub-standard lots that could be developed if a variance was granted giving relief for area, width or both.

The Municipal Planning Office recommended that the application be approved since the variances requested were minimal and that the relief could be granted without an adverse affect on the neighborhood or adjacent property. The Board neither approves or disapproves the MPO study. It does not concur, however, with the recommendation of the MPO.

14. The applicant testified that replacement of the existing garage by a house on Lots 813 and 814 would have no destabilizing effects on the neighborhood because care would be taken to protect existing greenery, the new home would be of an approximate size and suitable to the neighborhood and there were many other houses and lots in the neighborhood of size comparable to the one applicant proposes.

15. As for the character of other houses and lots in the neighborhood, the applicant testified that in the area bounded by Military Road, 38th Street, Fessenden Street and 41st Street, N.W., there are forty-eight existing houses on substandard lots. The opposition rebutted that thirty-seven of these houses are clustered around Belt Road in the vicinity of Fessenden Street and that although applicant points to eleven others as being "distributed throughout the area," the only one located on Reno Road is north of Jocelyn Street. The other ten are scattered and none of the eleven is so situated as to have an adverse visual impact upon the neighborhood of spacious lots with many fences and large houses along Reno Road between Harrison and Jocelyn Streets.

16. Evidence was presented by all parties on the issue of the extent to which other lots in the neighborhood could be subdivided under any precedent established by grant of the subject request for variance.

17. There were many letters of record from neighboring property owners in opposition to the application. There were no letters of record in favor of the application. Petitions circulated within four blocks of the subject property contained thirty seven signatures in opposition to the application.

18. The property is located in Advisory Neighborhood Commission 3E. It is directly across the street from property in ANC 3G.

19. The Chairperson of Advisory Neighborhood Commission 3E, who is also Commissioner of Single Member District 3E04, in whose district the subject lots are located, testified that the results of a survey which she conducted within a 750 foot radius of the subject lots showed that three of the residents in the survey favored the granting of the application, seventeen were opposed and four persons had no opinion.

20. Advisory Neighborhood Commission 3E, ANC 3G, the single member Commissioner 3G-07, the Friendship Neighborhood Coalition and private neighborhood property owners testified in opposition to the application on the common grounds that: (a) The opposing parties, particularly ANC 3E, opposed the granting of any variances in the area; (b) If the variance were granted, others would also be justified and that speculative purchases and construction of additional houses on substandard lots would lead to the deterioration of a uniquely desirable neighborhood; (c) The proposed dwelling and lot would be small and not in conformity with the spacious houses and lots on Reno Road with their large trees and open spaces;

(d) The granting of the variances would aggravate neighborhood parking and local and through traffic problems close to a hazardous intersection, that granting the variance would leave the existing house on Lot 32 less than five feet from the property line and without its former garage and access to the alley;

(e) The application of the general standards in the Zoning Regulations and denial of the variance would not cause peculiar and exceptional practical difficulties to the owner-applicant, a recent purchaser and assignor of part of the property.

21. The Board is required by statute to give "great weight" to the **issues** and concerns of the Advisory Neighborhood Commission. As to those issues and concerns, the Board makes the following findings:

- a. Each case must be judged on the specific set of facts presented. The Board is not inclined to accept the position that no variances should be granted in an area, without giving due regard to the "exceptional narrowness, shallowness or shape of a specific peice of property...or... exceptional topographical conditions or other extraordinary or exceptional situation or conditions of a specific peice of property," as required by the Zoning Regulations and the Zoning Act.
- b. There is no evidence before the Board to suggest that there are other lots in this area which are so similar in character as to be virtually identical to the subject lot so that a meaningful precedent would be set by the granting of this application which would mandate the approval of other future applications. As noted above, the Board finds that each case must be judged on its own merits, and does not believe that a binding precedent would be set here. The Board notes however, that preservation of neighborhood stability is an objective to which the Board is committed, and the Board finds that denial of the application will in part serve as notice to potential future applicant of that commitment.
- c. The Board concurs with the position of the ANC that the approval of the application could result in a dwelling not in conformity with the majority of the existing dwellings in the neighborhood.

- d. The Board does not concur with the ANC's contention that parking and traffic problem would be aggravated. Only one new dwelling which would have an off-street parking space would be constructed. Only one existing dwelling would be potentially deprived of an existing parking space. These changes are so minimal as to be unmeasurable and of no real significance.
- e. The Board concurs with the ANC's argument on the practical difficult issue. This property was purchased by the applicant as essentially one piece, it has always been used as a whole, and there is no evidence to suggest that the property was purchased in any way other than as a single house with a large side yard. The Board finds no practical difficulty upon the owner by strict application of the regulations.

CONCLUSIONS OF LAW AND OPINION:

The applicant seeks area variances, the granting of which requires a showing of a practical difficulty upon the owner stemming from the property itself and provided such relief can 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.

Based on the record, the Board concludes that the three lots have been and now are being used as one property and are of a size common in the neighborhood. The owner-applicant divided the three lots, leaving to herself the non-conforming subject property improved by a garage. The fact that the undersized subject property would be worth more with a separate residence on it than it is now as a side yard and garage for the existing house is also not the type of practical difficulty which justifies an area variance. The Board concludes there is no practical difficulty upon the owner to continue use of the three lots as one living unit.

The Board is aware of the great opposition in the neighborhood to the granting of the variances. It has given the great weight required of it to the issues and concerns of the ANC, even though it does not completely agree with all of the contentions raised by the ANC, as more fully set out above.

The Board further concludes that the variances cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. Granting the variances would result in two non-conforming properties and would deprive the existing house of its garage and access to the alley and would result in the construction of a house smaller than most in the neighborhood on a lot smaller than most in the neighborhood.

Accordingly, it is therefore ORDERED that the application is DENIED.

VOTE: 3-0 (Leonard L. McCants, William F. McIntosh, and Charles R. Norris to DENY, Chloethiel Woodard Smith not voting).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

27 NOV 1978