

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 12656, of Milton O. and Doris E. McGinty, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3105.42 to permit a new residential development, for a special exception under Sub-section 7205.3 to permit accessory parking to be located on a lot other than where the principal use is located, for a variance from the floor area ratio requirements (Sub-section 3302.1) and for a variance from the requirement that a multiple dwelling have side yards if it does not share a common division wall (Sub-section 3305.4) to permit the construction of a 16 unit apartment house in the R-5-A District at the premises 2599 Naylor Road, S.E., (Parcel 219/52, and Square 5631, Lot 34).

HEARING DATE: May 24, 1978  
DECISION DATE: May 31, 1978

FINDINGS OF FACT:

1. The subject property is located on the southwest side of Naylor Road, S.E., between Altamont Place, and Good Hope Road and is in an R-5-A District.

2. Square 5631 in which the subject property is located, is bounded by Naylor Road, Good Hope Road and Altamont Place. The square is developed with apartment buildings fronting on all three streets. The level of development is quite intensive.

3. The topography in the area is also difficult. The land along Naylor Road is substantially higher than and slopes down toward Good Hope Road. It is also higher than the elevation of Naylor Road. The existing development in the square is terraced to cope with the topography. The lots to the north and the west are at a substantially lower grade from the subject property.

4. The applicant proposes to construct a new apartment building with sixteen dwelling units. The currently vacant site is fifty feet wide and 207 feet deep and has an area of 10,366 square feet. The proposed building will have three floors and a basement. Each floor including the basement will have four apartments, a total of sixteen units. The building will be rectangular in shape having a width of forty feet fronting along Naylor Road and a depth of 103 feet parallel to the side yard. There will be no side yard on the northerly side of the building since this side of the proposed building will be built to the property line. The entrance will be approximately midway along the south side of the building having access through the side yard from Naylor Road. Parking will be located to the rear of the building.

5. The front portion of the subject site is vacant. The rear portion of the site where the applicant proposes to provide parking for the building is marked and already being used for accessory parking for two apartment buildings located at 2601 and 2603 Naylor Road, located on the adjoining lots 15 and 34.

6. The said apartment buildings 2601 and 2603 Naylor Road were constructed prior to 1958, and were not required to have parking. Each of the two buildings have fourteen apartments for a total of twenty eight apartments. There is not enough space on lots 15 and 34 to provide sufficient parking for the buildings located on them. The parking demand is being met by providing accessory parking on the parcel 219/52 which is the subject of this application. The applicant has proposed to assign these spaces to the new building to be constructed and leave the existing buildings without sufficient parking.

7. The applicant owns the above mentioned lots 15 and 34 which are located adjacent and to the south of the subject parcel 219/52. The total property which includes parcel 219/52 and also the lots 15 and 34 was acquired by the applicant in 1974. The property was in single ownership prior to 1974 also. The accessory parking for the apartment buildings at 2601 and 2603 Naylor Road existed on the subject parcel 219/52 at the time of its acquisition by the applicant in 1974.

8. Entrance to the parking area is from the southerly side of lot 15 which is not in the ownership of the applicant. This right to entrance appears to exist by custom rather than a formalized legal document at the present time. The existing driveway on the northerly side of lot 15 is used primarily for exit from the parking, and runs adjacent to and outside the subject parcel.

9. The side yard on the south side for the proposed building will be approximately ten feet. The main entrance to the building will be provided through this side yard. As stated earlier, there will be no side yard on the north side, requiring an eight foot variance.

10. Of the sixteen parking spaces as shown in the site plans, seven spaces will be located in part on lot 34 on which another apartment building owned by the applicant is located. As noted above, these parking spaces are already in existence and are accessory to the two existing apartment buildings.

11. The floor area ratio to be provided in the proposed building exceeds the 0.9 FAR permitted in an R-5-A District by approximately thirty-two per cent. The maximum permitted is 9,329.85 gross square feet, while the applicant proposes 12,308 gross square feet or an excess of 2978.15 square feet.

12. There is no provision for open space for active or passive recreation of the residents as indicated by the drawings submitted on record. The property is located in an area where the existing intensity of development is particularly high.

13. There is nothing exceptional extraordinary or unique to distinguish this property from other property in the area and to qualify it for a variance. The Board finds that the variances devolve from the density and type of development proposed, rather than the nature of the property itself.

14. The only evidence presented by the applicant as to the practical difficult he would suffer if the regulations were strictly applied related to the cost he paid for the property.

15. Other kinds of residential development could occur on the property without requiring variances.

16. The Municipal Planning Office, by report dated May 18, 1978, recommended that the application be denied on the grounds that the proposed development will adversely affect the neighborhood, will obstruct light and air to the existing and proposed development and will overcrowd the site. The MPO further noted that the requested variances arise from the intensity of the development proposed. The Board so finds.

17. By memo dated April 7, 1978 and May 19, 1978, this application was referred to the Department of Transportation for its review and report. No report was received by the Board prior to its decision.

18. By memorandum dated April 7, 1978, this application was referred to the Department of Housing Community Development for its review and report. By memo, dated April 21, 1978, the DHCD reported that the public facilities were adequate to serve the occupants of the proposed building, who will also be able to avail themselves of other services with no difficulty and that the introduction of new apartments in this neighborhood is a reasonable use of the land and compatible with surrounding land uses.

19. By memo dated April 7, 1978, this application was referred to the Board of Education for its review and report. By memo dated May 5, 1978, the Board of Education replied it found no objection to the proposed dwellings and that there will be no impact upon school facilities in the subject area.

20. Opposition to the application was voiced by the abutting property owners to the north of the proposed apartment house on the grounds that their property is approximately five feet lower than the subject property and would suffer from drainage from the subject property; that no retaining wall was provided to protect his property and that since no side yard was provided the applicant could not service the exterior wall of the proposed apartment house without encroaching onto the neighbor's property.

21. The Fort Stanton Civic Association, the Frederick Douglas Community Improvement Council, and the Neighborhood Housing Services opposed the application on the grounds that the neighborhood has already been impacted with undesirable, high intensity apartment development and that more of such development would be inappropriate, that poorly designed and poorly maintained apartment complexes devalue the neighborhood and that the subject apartment house is contrary to the intent of the rezoning proposed by the various organizations which is now pending before the Zoning Commission.

22. Advisory Neighborhood Commission 6C made no recommendation on this specific application.

CONCLUSIONS OF LAW:

The applicant seeks two area variances, the granting of which requires a showing of a practical difficulty that arises from the property itself. Based on the record, the Board concludes that there is nothing exceptional about the subject property to qualify it for the variances, nor is there any practical difficulty arising from the property itself. The requested variances arise from the intensity of the proposed development. The property could be used for other residential purposes, which would not require variances. The Board further concludes that the granting of the variances and special exceptions would cause substantial detriment to the public good and would substantially impair the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is DENIED.

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VOTE: 5-0 (John G. Parsons, Charles R. Norris, Chloethiel  
Woodard Smith, William F. McIntosh and Leonard  
L. McCants to DENY).

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

ATTESTED BY: Steven E. Sher  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 30 JUN 1978