

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12814, of J. Anthony Stout, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from Sub-section 7606.3 to allow remodeling and alterations of an existing building to be used as a dwelling when said building is located on an alley lot which abuts an alley less than thirty feet in width in the R-5-B District at the premises No. 9 Hillyer Court, N.W. (Square 66, Lot 807).

HEARING DATES: November 22, 1978 and February 28, 1979

DECISION DATES: December 6, 1978 and January 10 and April 4, 1979

FINDINGS OF FACT:

1. The subject property is located in the square bounded by Florida Avenue, R Street, 21st Street, Q Street and Massachusetts Avenue, N.W. It is known as 9 Hillyer Court and is in an R-5-B District.
2. The subject site has no street frontage. The south side of the lot abuts a fifteen foot wide alley, and the east side of the lot abuts an alley which is fifteen feet wide at one end, but narrows down to five feet at the other end. The north side of the lot abuts the rear lot lines of lots which fronts on R Street, while the west lot line of the lot abuts the rear lot lines of lots which front on Florida Avenue.
3. The alleys have access to both 21st Street and Florida Avenue. All the alleys in the square are less than thirty feet in width.
4. The subject site is trapezoidal in shape and contains approximately 3,000 square feet. It is improved with a two story building which contains approximately 6,000 square feet of gross floor area.
5. The building appears to have originally been constructed as a stable. There is evidence in the record that the building has been used for residential purposes in the past.

6. The applicant proposes to use both floors of the building as a single family residence. Plans on file with the application, marked as Exhibit 38 of the record, show the second floor to have five bedrooms, three bathrooms and a living room. The first floor would have a kitchen, dining room, art and trophy room, maid's quarters and a garage.

7. The applicant has requested a variance from the limitations of Sub-section 7606.3, which reads as follows:

7606.3 An existing one-family dwelling located on an alley lot which abuts an alley less than 30 feet in width shall not be converted, altered, remodeled, restored, or repaired for use as a one-family dwelling if the cost of such conversion, alteration, remodeling, restoration, or repair exceeds one-half of the value of the structure immediately prior to the time of such conversion, alteration, remodeling, restoration, or repair. Non-residential structures located on such alleys shall not be converted, altered, remodeled, restored, or repaired for human habitation, regardless of cost.

8. There is conflicting evidence in the record as to whether the building is an existing one family dwelling or not. It is clear that the first floor of the premises have not been used for residential purposes. It is also clear that at some point, people did reside on the second floor. Section 1202 of the Zoning Regulations defines a "one family dwelling" as "a dwelling used exclusively as a residence for one family." Since other uses have occurred in the building including storage, "cultural work" and the parking of automobiles, the Board finds that the building is not a one-family dwelling.

9. The portion of Sub-section 7606.3 which applies to this application is the prohibition against converting, altering, remodeling or restoring a non-residential structure for human habitation on an alley less than thirty feet in width. The portion of Sub-section 7606.3 related to the cost of restoration is not applicable to this case.

10. In an R-5-B District, there are a number of uses which can be made of alley lots. Art galleries, museums, parking lots, parking garages and storage of wares and goods are all permitted, some as a matter-of-right, some requiring approval of the Board of Zoning Adjustment.

11. The applicant contends that the size of the lot and the size of the building thereon create an extraordinary condition affecting the property. While the lot and building may be larger than many alley lots with buildings on them, the Board finds that the applicant has failed to demonstrate how that condition affects the consideration of the Board. If the lot were larger or smaller, the width of the alleys remains the same.

12. The applicant further contends that the only feasible use for the property is as a single family dwelling, and thus the strict application of the Regulations would result in peculiar and exceptional practical difficulties for the owner. As set forth in finding of fact No. 23 below, the Board finds such is not the case.

13. Advisory Neighborhood Commission - 2B, by letter dated November 21, 1978, supported the application, on the grounds that the community and the city are in great need of housing. The ANC stated it was not aware of any opposition to the case.

14. The Board is required by statute to give "great weight" to the issues and concerns of the Advisory Neighborhood Commission. The Board finds that while the ANC has a laudable concern in seeking more housing, the ANC did not address the requirements of Paragraph 8207.11 relative to the granting of the variance. The Board must address these requirements. The Board also notes that there were opposing parties to the case.

15. The Dupont Circle Citizens Association, supported the application, because it would provide housing in the area and would provide tax revenues for the city. The association opposed any commercial use of the premises, but did not address the issues regarding the requirements of Paragraph 8207.11.

16. A number of residents and property owners from the square in which the subject property is located opposed the application. The grounds for the opposition were as follows:

1. The Alley Dwelling Act, Sections 5-103 through 5-109 of the District of Columbia Code, is a statement of the intent of Congress to preclude the type of renovation proposed by this application, and Section 7606 of the Zoning Regulations is inconsistent with the act and unenforceable.

2. The basis of the variance as requested is not in a condition of the property but in the configuration of the alleys in the Square.
3. The notice of the hearing was defective, in that it did not refer to the amount of money which the applicant will expend in this renovation.
4. The applicant failed to show anything unusual or extraordinary about the lot, and further failed to show how the strict application of the Regulations will create a hardship for the owner because of some condition of the property.
5. The use of the building as a dwelling would create a fire safety hazard.
5. The building is out of character with the area, having no street frontage, excessive lot occupancy, no sidewalks, etc.

17. As to the arguments presented by the persons in opposition, the Board finds that those portions of the Alley Dwelling Act which expressly forbid alley dwellings were repealed in 1954. The Board has previously found that those portions of Sub-section 7606.3 which relate to the cost of the renovation are not relevant to this application. The Board concurs with the opposition and finds that there is no condition of this property which makes it exceptional, extraordinary or unique. As to the character and appearance of the present building, the Board finds that is not an issue in this case, since the building exists and may continue, and may in fact be used for some other purpose.

18. As to the issue of fire safety, the Board considered the matter at its public meeting of December 6, 1978. At that time, the Board directed the staff to request the Municipal Planning Office to request the Fire Department to review the matter and report to the Board as to the accessibility of fire trucks to this building, because of the alley situation, and as to whether a building in the subject location is a fire hazard.

19. By memorandum, dated December 28, 1978, the Fire Department reported to the Director of the Municipal Planning Office that "the alley system serving this structure is of inadequate width to accommodate fire apparatus." The Department recommended that the application be disapproved.

20. At it's January 10, 1979 meeting, the Board received the Fire Department report. In order to make the report a part of the record, the Board scheduled a further hearing on the case for Wednesday, February 7, 1979. The further hearing was limited to the report of the Fire Department and matters related thereto. The further hearing was actually held on February 28, 1979, when the earlier date was postponed because of adverse weather conditions.

21. At the further hearing, two representatives of the Fire Department appeared and testified. The Department reported that if a sprinklersystem connected to the normal water system were installed in the building, the Department would be satisfied as to the safety and protection of the building. The applicant agreed to provide such a system. The Board finds that the concerns related to fire safety have thus been satisfied.

22. At the further hearing, the Board was made aware that the original applicant, J. Anthony Stout, had sold the building to William S. Chewning. The Board allowed the substitution of Mr. Chewning for Mr. Stout. One of the parties in opposition, Robert E. Lynch, further made the Board aware that construction work was in progress at the site. The Board requested the Zoning Administrator to investigate the construction and report to the Board.

23. By memorandum dated April 2, 1979, James J. Fahey, the Zoning Administrator, reported that an application for a Certificate of Occupancy to use the premises as an "Art Museum Gallery" was filed on February 16, 1979. Further, building permits were issued on February 20, March 7 and March 16, 1979, all listing use of the premises as art gallery. One of two permits issued on March 16 was for an addition of two bathrooms and other interior work. The plans for such work were not reviewed and approved for zoning. Those plans show a living room, bedroom, two bathrooms, kitchen and dark room on the second floor. That permit was later cancelled.

24. Subsequent to the Boards meeting of April 4, 1979, at which time the Board voted on the application, but prior to the issuance of the Order, the applicant filed a motion for Further Hearing pursuant to Section 5.3 of the Supplemental Rules of Practice and Procedure. Opposing parties filed a response to the motion. As to the motion, the Board finds that all of the facts presented in this case have been well considered by the Board, and the Board finds no reason for reopening the record for further hearing.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the Alley Dwelling Law does not persuade the Board from considering this case and that the repeal of Sections 5-101 and 5-102 of the D.C. Code in 1954 removes that factor as an issue in this case.

Based on the record as recited in the findings of fact, the Board concludes that the requested variance is a use variance, since what is at issue is how the building is to be used. No variances are requested for lot area, lot occupancy, side yard, rear yard or any other height area or bulk requirements of the Zoning Regulations. As a use variance, the applicant is required to prove that there is an undue hardship upon the owner arising out of some exceptional, extraordinary or unique condition of the property. The Board concludes that the applicant has demonstrated nothing unusual about the site, and has presented insufficient evidence to support the contention that the strict application of the Zoning Regulations would constitute a hardship upon the owner. The Board further concludes that the property can reasonably be used for a purpose permitted in the R-5-B District, and notes that the present owner has applied for permits to so use the building.

The Board concludes that it has accorded to the written report of the ANC the "great weight" to which it is entitled, but for the reasons stated herein, arrives at a different position on the application. The Board concludes that approval of the application would not be consistent with the intent and purposes of the Zoning Regulations. It is therefore ORDERED that the application is DENIED.

VOTE: 5-0 (Charles R. Norris, William F. McIntosh, Leonard L. McCants, Theodore F. Mariani and Chloethiel Woodard Smith 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: 23 JUL 1979

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."