

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12873, of Richard V. McNamara, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Paragraph 3104.33) to permit conversion of a flat to an apartment house when part of the proposed structure did not exist prior to May 12, 1958 in an R-4 District at the premises 529 - 4th Street, S.E. (Square 795, Lot 46).

HEARING DATE: March 13, 1979
DECISION DATE: April 4, 1979

FINDINGS OF FACT:

1. The application was advertised as a variance from the use provisions. A subsequent memorandum from the Zoning Administrator's Office, dated February 14, stated that a further review of the plans disclosed that Board approval is also required for variances from the lot width and the lot occupancy requirements of the Zoning Regulations in addition to the variance from the use provisions previously requested.

2. At the public hearing of March 13, 1979, the application was amended to provide for the requested variances from the lot occupancy and the lot width requirements of the Zoning Regulations.

3. The subject site is located on the west side of 4th Street, between South Carolina Avenue and G Street. It is an R-4 District, and is known as 529 - 4th Street, S.E.

4. The subject lot has an area of 6168.80 square feet. The lot is irregularly shaped as shown on the plat marked as Exhibit No. 2 of the record. The lot slopes uphill east to west and is fenced in by a six foot high stockade fence.

5. The site is improved with a three story detached structure with an english basement.

6. To the north of the dwelling, there is a driveway with parking space for two cars.

7. To the west, north and south of the subject property are the rear and side yards of residential dwellings. To the east, across 4th Street, there is a church and other dwellings. The dwellings consist of single family homes, flats and a twelve unit apartment.

8. The existing house is presently used as a flat. One unit is on the ground floor, with the second and third floors comprising the second unit, which is owner-occupied.

9. The applicant proposes to build a two-story rental unit in the rear yard of the owner-occupied flat. Access to the subject unit will be via a covered walkway leading from a driveway which fronts on 4th Street.

10. The proposed third rental unit will be of concrete block and stucco construction with a shed roof. The building will be thirty feet by twenty-six feet in size and two stories in height.

11. The proposed unit would have one bedroom on each floor. The applicant proposes to occupy the ground floor of the proposed unit upon retirement or health disability. Until such time the unit would serve as a source of income.

12. There will be a courtyard between the proposed unit and the existing structure. The buildings will be connected by a covered walkway made of redwood and fiberglass which will lead to the unit from the driveway on 4th Street.

13. The applicant requires a variance of 2.26 feet from the lot width requirements of forty feet and 257.37 square feet from the forty percent lot occupancy requirement as required by Sub-sections 3301.1 and 3303.1 of the Zoning Regulations respectively.

14. The Office of Planning and Development, by memorandum dated February 16, 1979, recommended that the application be approved on the grounds that the proposed two-story rental unit's design represents a creative approach at utilizing the applicant's irregularly shaped lot. Also the change in land use from a two unit dwelling to a three unit dwelling at the subject premises will not cause substantial detriment to the public good. The Board does not concur for reasons hereinafter discussed.

15. An abutting property owner opposed the application on the grounds that construction of the proposed unit would invade his rear yard privacy, reduce the green open area on the interior of the block and impose on him an economic hardship. He was also opposed to the "construction" of a separate unit which did not constitute a "conversion". He further objected to the proposed covered walkway as a structure establishing a common living arrangement between the front and back units as shown to evade the Zoning Regulations. Also, the proposed construction would limit the use of the area, which presently serves as an open, unobstructed view from the rear yards of a number of surrounding property owners.

16. The Capitol Hill Restoration Society, by letter of March 13, 1979, stated that it's membership had voted overwhelmingly to oppose the application on the grounds that the addition of a third dwelling unit is not a conversion, but a new construction to create an apartment building in an R-4 District. The Society notes that in the preamble to the R-4 section of the Zoning Regulations, apartment houses are specifically discouraged in the R-4 District. There was also concern expressed that the characteristics of the lot size and its shape were not shown to create an undue hardship on the owner. The Society was also opposed to the reasons given by the applicant for seeking the use variance, namely his yard maintenance problems, his anticipated health problems and his desire to maximize the economic return from his property, on the grounds that "a variance cannot be granted where property conforming to the regulations will produce a reasonable income but, if put to another use, will yield a greater return", nor where personal circumstances constitute the hardship. The Capitol Hill Restoration Society stated that a poll of eighteen near-by neighbors found eleven opposed and seven not-opposed to the application. A neighborhood petition of twenty-five signatures opposing the application was submitted to the file. It stated no basis for the opposition. It did not indicate if the signers were owners or renters of property.

17. Advisory Neighborhood Commission 6B, made no recommendation on this application.

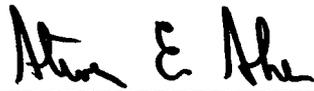
CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the relief requested to permit conversion of a flat to an apartment house is a use variance, the granting of which requires the showing of a hardship arising out of the property itself. The Board concludes that neither the economic hardship nor the potential medical hardship of the applicant constitutes a hardship as defined in Paragraph 8207.11 of the Zoning Regulations. Further, the Board notes that the R-4 District is designed to stabilize remaining one-family dwellings and discourage apartments. Moreover, based on Findings of Facts numbers fifteen and sixteen, which includes the grounds for the opposition, the Board concludes that such relief cannot be granted without substantial detriment to the public and substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-1 (William F. McIntosh, Charles R. Norris, Leonard L. McCants to DENY, Chloethiel Woodard Smith to GRANT).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

3 JUL 1979