

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12920 of the Estate of Maud M. Moreland, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the minimum lot area and lot width requirements (Sub-section 3301.1) to construct a single family detached dwelling in an R-1-A District at the premises 2744 Rittenhouse Street, N.W. (Square 2319, Lot 825).

HEARING DATES: May 16, 1979 and October 21, 1981
DECISION DATES: July 11, 1979 and November 4, 1981

INTRODUCTION

The Board, in BZA Order No. 12920 dated September 10, 1979, denied the subject application. The Board concluded that the size of the lot created a practical difficulty for the legal title holder, Maude Moreland, in that the lot is too small to permit any independent use of the site. The Board noted however, that the applicant at that time, Miss Moreland, had the option of selling the lot to the adjoining property owners, who had at various times offered to pay fair market value for the lot to subdivide and include it as part of their property. Notwithstanding the conclusion as to practical difficulty, the Board further concluded that the application could not be granted because the small area of the lot, when combined with the need for a lot width variance, created an overcrowded situation in the area. The Board concluded that the material facts relevant to this case had not changed since 1976, when a variance case, BZA Order No. 11716, dated February 19, 1976, brought on the same grounds for the same site as this case, was denied by the Board. The Board concluded that the granting of this application would be of substantial detriment to the public good and would impair the intent of the Zoning Regulations. By BZA Order No. 12920, dated March 6, 1980, the Board Denied a Motion for Reconsideration or in the alternative for Rehearing. John E. and Patricia H. Buhl, the contract purchasers herein, and Miss Moreland then sought judicial review of the BZA's decision by the District of Columbia Court of Appeals, D.C. Appeal No. 80-269.

While the petition for review was pending, Maud M. Moreland died testate on March 23, 1980. The Estate of Maud M. Moreland, deceased, was substituted for Maud M. Moreland as the applicant herein.

On August 21, 1981, the District of Columbia Court of Appeals, remanded the record to the Board for development of Findings of Fact and Conclusions of Law consistent with the requirements of the District of Columbia Administrative Procedure Act.

Pursuant to the remand, the Board held a further hearing on October 21, 1981, limited to the following issues:

- a. Whether the subject property can and will be sold to one or more abutting property owners in the event the BZA were to deny the variance requested.
- b. What adverse effects, if any, the granting of the variances would have on nearby and/or abutting properties.

As a matter preliminary to taking evidence on the above two issues, the Board heard argument on the applicant's motion that two of the parties in opposition, Clinton B.D. Brown, Esquire of Advisory Neighborhood Commission 3G and Richard L. Black, Esquire, elect whether their appearances would be as attorneys or as witnesses. On the basis of those elections, the Board ruled that Mr. Brown, as the attorney representing ANC 3G, could call witnesses but not testify himself as a witness. Mr. Brown was also allowed to present legal argument in opposition to the application. Mr. Black elected to proceed as a witness in his own behalf and was allowed to submit evidence in opposition to the application.

FINDINGS OF FACT

On the basis of the documentary and testimonial evidence adduced at the original hearing and at the remand hearing, the Board finds as follows:

1. The subject property is located on the south side of Rittenhouse Street, N.W. between 27th Street and Moreland Street, N.W. The subject premises is zoned R-1-A and is known as 2744 Rittenhouse Street, N.W.
2. The subject property has an area of 6,829 square feet and is irregular in shape; i.e. the lot is long and narrow.
3. The estate of Maud M. Moreland has a contract to sell the property to Mr. and Mrs. John Buhl for \$25,000. The contract is contingent upon approval of the requested variances by the Board. The contract purchasers propose to construct a single

family detached dwelling on the subject lot for use as their own residence.

4. The R-1-A District requires a minimum lot width of seventy-five feet and a minimum lot area of 7,500 square feet. The subject property has an average lot width of 44.96 feet and has a lot area of 6,829 square feet. Variances of 30.04 feet, or forty percent, in lot width and 671 square feet, or nine percent, in lot area are thus required to construct a single family detached dwelling on this lot.
5. The subject lot was owned by Maud M. Moreland for many years. It was once part of a larger lot which was subdivided in the 1940's.
6. Prior to December 7, 1955, the lot could have been built upon as a matter-of-right in the A Semi-restricted area district then in effect. On December 7, 1955, the Zoning Regulations were amended to require a minimum lot area of 5,000 square feet and a minimum lot width of fifty feet.
7. On May 12, 1958, the R-1-A District was adopted and applied to this property.
8. The lot was established in its current form on July 12, 1963, by the combination of two other lots created by various street closings.
9. In an Order dated December 4, 1974, the Board denied application No. 11716, filed by Maud M. Moreland requesting the same relief as requested herein. By Order No. 115 dated July 14, 1975, the Zoning Commission vacated that Order of the Board and instructed the Board to rehear application No. 11716 to consider new testimony. By Order No. 11716, dated February 19, 1976, the BZA again denied the application. In that Order, the Board concluded:

"that the applicant has not proved to the Board's satisfaction that a practical difficulty exists, and that the applicant had no recourse regarding some reasonable disposition of the property. At one point in time, the applicant had the option of selling the property to an abutting owner, for less than the price she was willing to accept. The Board does not believe it is the responsibility of the Board to approve a variance which in its judgement would impair the intent and purpose of the Zoning

Regulations in order to give an owner a greater return on his property. The Board believes that the lot is sub-standard in such a manner, particularly as to the width, that the application should not be approved."

10. John and Patricia H. Buhl saw an ad in the Washington Post listing the property for sale. They responded and offered \$20,000 for the property. The real estate broker advised that Miss Moreland would not accept anything less than \$25,000. Mr. & Mrs. Buhl then entered into a sales contract on September 11, 1978, to purchase the subject lot, conditioned upon the approval of the requested variances, for \$25,000. The Buhl's contract was the only contract to purchase the subject property at the time of the original hearing on this application.
11. From 1975 until subsequent to the issuance of the Court of Appeals Order remanding this case to the Board, there were no other serious negotiations to purchase the property. While persons opposing this application presented testimony that several oral offers to purchase the property were made to Maud M. Moreland while she was alive, there was no evidence that any of these offers were ever reduced to writing or that Miss Moreland seriously considered any of them.
12. Mr. Martin Burke, the real estate agent who negotiated the sale of the subject property to the Buhls, testified that based on comparable real estate sales in the neighborhood of substandard lots and based on the assessed value, the sales price of \$25,000 was reasonable. The Board so finds.
13. On September 14, 1981, Richard L. Black and his wife Suzanne C. Black, the owners of abutting property, entered into a "backup" conditional sales contract with the co-executor of Miss Moreland's estate to purchase the property for \$15,000. The "backup" contract was conditional upon the final denial to the Buhls of the relief requested herein, the denial to them of a building permit, and approval of the contract by the Superior Court of the District of Columbia. The Blacks paid \$300 on deposit, with the balance of \$14,700 due on conveyance. These buyers contend that the purchase price was reasonable since they were not purchasing a buildable lot but rather an unbuildable lot for the purpose of extending their rear yard.

14. The Board finds that there still exists a valid conditional sales contract between the estate of Maud Moreland and the contract purchasers, Mr. and Mrs. Buhl, which is conditioned upon the disposition of the variances requested in this case. The Board further finds that only since the remand Order has there been any other sales contract for the subject property, namely the "backup" conditional sales contract executed September 4, 1981 between Richard L. and Susanne C. Black and the estate of Maud M. Moreland. Given the necessity of Superior Court approval of any conveyance of the property under the Black's back-up contract, it is not certain that the property would in fact be sold to the Black's if the Board were to deny this application.
15. At both public hearings, persons appearing in opposition to this application testified that granting the requested variances would adversely affect the neighborhood by the appearance of overcrowding and the exacerbation of an alleged drainage problem. The contract purchasers presented evidence as to the history of the sub-divisions of the subject property and of the development of surrounding property, which indicated the reason for the existence of the subject lot with its substandard dimensions. That history is in part summarized in Findings of Fact No. 5 through 8, supra. The lots in the subject block were subdivided prior to the present zoning and ten of the fourteen lots in that block are substandard in either lot width or lot area under R-1-A zoning. There was further evidence presented, which the Board credits, that eight of the fourteen lots in the block, including the lot in question, are substandard in both lot width and lot area under R-1-A standards. The Buhls also presented evidence, which the Board credits, with respect to numerous other substandard lots in the surrounding area.
16. The adjacent house to the east of the subject lot is built on a lot that is only six feet wider than the applicant's lot and contains an area of 1250 square feet less than the applicant's lot.
17. The portion of the square in which the subject property is located was originally considered for R-1-B zoning prior to the adoption of the present Zoning Regulations in 1958. However, the boundary of the R-1-A District was drawn so as to divide Square 2319 into both R-1-A and R-1-B Districts. Had the subject lot been designated R-1-B, the

property could be improved with a single-family detached dwelling as a matter of right, since it meets the R-1-B requirement for lot area and the width of the lot meets the eighty percent requirement as provided in Sub-section 3301.3 of the Zoning Regulations.

18. The dwelling proposed to be constructed will conform to the character of other dwellings in the neighborhood. The proposed dwelling will meet the side and rear yard requirements of the R-1-A District and will not exceed the percentage of lot occupancy for the R-1-A District. The distance between the proposed dwelling and the adjoining dwelling on the west will be greater than eight feet as a result of a substantial distance of the latter dwelling from the common boundary line between the property. The proposed dwelling has been designed so that with respect to the property to the east there is approximately twenty-three feet between the side of the latter dwelling and the side of the proposed dwelling.
19. The orientation of the abutting properties with reference to the sun prevents any obstruction of light by construction of the proposed dwelling.
20. John E. Buhl, a civil engineer, having examined the topography, testified that in the subject block in connection with the issue of drainage, the impact of a 1,400 square foot house on the absorption of rain water will have little, if any, effect on runoff in the block. The Board so finds. The contract purchasers further stated they would take those measures necessary to correct any drainage problem.
21. Advisory Neighborhood Commission 3G, by letter dated October 5, 1981, opposed the application on the grounds previously stated in its letter to the Board dated May 14, 1979, as to the first public hearing. In its May 14, 1979 letter, ANC 3G opposed the application on the following grounds:
 - a. That the lot width variance sought of forty percent is "considerable."
 - b. That granting this application would establish a dangerous precedent, and
 - c. That while "each case must be judged on its own merit, the views of the neighbors in such cases are of paramount importance."

In response to these concerns, the Board states as follows:

First, while a forty percent lot width variance is indeed a "considerable variance," it is not excessive under the circumstances of this case, because in the immediate neighborhood there are many lots developed with single family detached dwellings, which lots have widths of forty to fifty feet. See Vol. 3, Baist's Atlas (1968 ed), Plans 34 and 36.

Second, the Board believes the granting of this application will not set a precedent which will prove deleterious to the neighborhood. The Baist Atlas indicates that the vast majority of lots in this neighborhood are already developed. Moreover, as noted above, the granting of this variance application will not result in the development of a lot which is out of character in area and width with many other lots in the neighborhood.

Finally, while the views of neighborhood residents must be considered, they cannot be controlling. Rather, the Board's decision is governed by the facts presented as those facts bear on the legal standards governing area variances.

CONCLUSIONS OF LAW AND OPINION

The Board concludes that the applicant has met its burden of proof of showing a practical difficulty upon the owner arising out of some unique or exceptional condition of the property and that the application, if granted, will not be a detriment to the public good and will not substantially impair the intent and purpose of the zone plan.

The Board further concludes that the construction of the dwelling proposed by the Buhl's will not result in overcrowding and will be in conformity with the character of dwellings on other improved lots in the neighborhood. The Board further concludes that the neighborhood is characterized by substandard lots. Accordingly, the granting of this application will not be of substantial detriment to the public good and will not impair the intent of the Zoning Regulations.

While it may be appropriate under some circumstances to deny area variances for a substandard lot on the ground that the lot can be sold to adjacent property

owners [see 2 Williams, American Land Planning Law (1974) §41.02; and Harrington Glen, Inc. v. Municipal Bd. of Adjustment, 52 N.J. 22, 243 A 2d 233 (1968)], the Board is of the opinion that the course it has chosen to follow in this case is the more suitable one because of (1) the absence of any significant adverse effect on abutting or neighboring property resulting from the granting of the variances sought, (2) the apparent substantial difference in the value of the lot as a buildable lot and the value of the lot as an un-buildable lot, and (3) the uncertainty that the back-up contract of the Blacks would be approved by the Superior Court in the probate proceedings relating to the Maud M. Moreland estate.

It is therefore hereby ORDERED that the BZA Order No. 12920, dated September 10, 1979 is VACATED, and it is further ORDERED that this application is GRANTED subject to the following conditions:

1. John and Patricia Buhl shall adhere to the building plans presented to the Board in support of the application. Any substantial deviation from such plans must be approved by the Board before such deviation may be executed.
2. The Buhl's shall take measures reasonably necessary to prevent the development of Lot 825 in Square 2319 from causing a drainage problem adversely affecting abutting properties.

VOTE: 5-0 (Walter B. Lewis, Charles R. Norris, Connie Fortune and Douglas J. Patton to RESCIND and GRANT, William F. McIntosh to RESCIND and GRANT by PROXY).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: MAR 30 1982

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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.