

letter dated July 5, 1979, the applicant requested the Board to defer a decision on the application to allow the review of alternatives to continue. At its public meeting held on July 11, 1979, the Board deferred a decision, pending receipt of reports from the Department of Transportation and the Office of Planning and Development. The Board requested that the reports be filed by August 1, 1979.

6. The reports from the Department of Transportation and the Office of Planning and Development were filed on July 30, 1979 and July 27, 1979, respectively. Those reports were not served on the parties to the case prior to the August 8, 1979 meeting of the Board. On August 8, the Board deferred again to allow the parties the opportunity to comment on those reports.

7. The agency reports were based on revised plans submitted by the applicant. Those revised plans, marked as Exhibits No. 43, 45 and 52 showed that the line of ten flats which had been located parallel to Michigan Avenue had been increased to twelve flats. Further, the line of five flats located on the east side of the site had been eliminated and had been replaced by three flats facing Quincy Street. Further, the access to the parking spaces had been revised to be through the alley.

8. By letter dated August 21, 1979, marked as Exhibit No. 48 of the record, counsel for the applicant indicated that a variance from the height in stories requirement for the three flats fronting on Quincy Street would be required. By letter dated September 28, 1979, counsel for the applicant requested that the application be amended to request such a variance.

9. At its public meeting held on October 3, 1979, the Board determined that the plans then pending before the Board were significantly different from those which had been the subject of the original hearing, and the variance relief had not been advertised for the original hearing. The Board thus determined that the application should be reheard de novo, with notice as if it were a new hearing. Such notice was given, and the case was heard on December 5, 1979.

10. The application as amended continues to propose the construction of fifteen flats. Those flats will be built in two groups. The first group will contain twelve flats, with the buildings located adjacent and parallel to Michigan Avenue. The second group will contain three flats and will be located adjacent and parallel to Quincy Street.

11. Each flat will consist of two dwelling units. Each unit will consist of two floors, the lower floor containing a living room, dining room, kitchen and powder room, and the upper floor containing two bedrooms, a den and two bathrooms. The units will be located one on top of the other, so that the building as viewed from the street will have four stories. Because of the slope of the site, the buildings appear to be only two and one half stories at the rear. Each unit will have its own separate exterior entrance. The lower unit will be entered from the street side, the upper unit from the rear. The lower level of each upper unit also has a balcony extending the full width of the unit.

12. There will be a parking area located to the rear of the two groups of flats. That parking area will contain spaces for thirty-four vehicles. Thirty spaces are required under the Zoning Regulations.

13. The property will be developed as a condominium project. Each unit owner will have the right to use one parking space. The remaining four spaces will be shared for visitor parking.

14. The site plan evidences that approximately fifty per cent of the site is covered by buildings and parking area. The remaining fifty per cent of the site is devoted to landscaped and planted open space.

15. There is a covered passageway in the middle of the row of flats facing Michigan Avenue. That passageway allows for convenient access from the parking area to the units which have entrances facing Michigan Avenue, N. E.

16. Vehicular access to the parking area is by way of a sixteen foot wide public alley which connects to Quincy Street. The applicant has agreed to provide a four foot easement along a portion of the east side of the property to widen the alley to twenty feet. That easement is contained in the record of the case, marked as part of Exhibit No. 51.

17. To the north of the site across Quincy Street there is a two story single family detached dwelling in the R-5-A District. To the east of the site, there is a public alley which extends southward from Quincy Street approximately 100 feet. That alley, which presently is restricted to one-way northbound traffic, serves as the egress from a drive-in bank facility located in the C-1 District east of the alley. The rear yards of several other commercial uses and row dwellings, which front on 12th Street in the C-1 District also abut the

subject site. To the south of the site is an existing four story apartment house in the R-5-A District. To the west of the site, across Michigan Avenue is the Turkey Thicket Playground.

18. The Board of Education, by memorandum dated May 24, 1979, reported that the application as originally filed would have no impact upon school facilities in the area. The Board finds that the amended application which includes the same number and size of units as the original application, will also have no adverse impact upon school facilities.

19. The Department of Housing and Community Development by memorandum dated June 1, 1979, reported that it had no objection to the application as originally filed, and supported favorable action by the Board. The Department reported that "The proposed development can be considered as compatible with its surroundings and well served by existing facilities. It should not have an adverse impact on any public facilities." The Department further commented that "The proposal is consistent with the objective of providing housing for families of all income levels by construction of units which will probably serve families of moderate incomes. The new flats will also be near other apartment buildings and thus fit in the residential neighborhood of which they are a part." The Board concurs with the report of the Department and finds that those comments are relevant to the revised site plan.

20. The Office of Planning and Development, by report dated July 24, 1979, recommended that the application be approved. The OPD reported that the R-5-A District is intended to permit a flexibility of design by permitting in a single district all types of urban residential development. The OPD was of the opinion that the revised plan with vehicular access from Quincy Street is an improvement over the original plan which eliminates the dangerous access from Michigan Avenue. The OPD believed that the variance should be granted, as this deviation from the Regulations is necessitated by the proposed new circulation plans. The OPD did not believe that the proposed height of the structures or their architectural styles will be incompatible with surrounding properties, as these properties are developed with varied architectural styles and heights. The Board concurs with the report of the OPD.

21. The Department of Transportation, by memoranda dated July 27, and August 24, 1979, reported that it approved of the revised site plan with access to the parking area from Quincy Street rather than Michigan Avenue. The Department's approval was predicated on the execution by the applicant of a four foot

easement to provide for a twenty foot alley, and a commitment from the applicant to construct the widening. In Finding of Fact No. 16, the Board found that the easement is a part of the record.

22. The applicant's traffic expert witness testified that there is adequate capacity in adjacent streets to serve the proposed development. The witness further testified that the revised plans reduced the impact on Michigan Avenue, and provided for a safer and more convenient circulation plan. The Board concurs with the comments of the traffic expert.

23. Pursuant to the authority of Sub-section 3307.2 of the Regulations, the two groups of buildings described in Finding of Fact No. 10 are to be considered as two buildings for the purpose of applying the Zoning Regulations. Witnesses for the applicant testified that all of the direct requirements of Sub-section 3307.2 have been met. The Board so finds.

24. The building facing Michigan Avenue also faces Quincy Street. For purposes of measuring the height of the building, the applicant chose to use the Quincy Street frontage. Because of the slope of the site, the height at the curb from the middle of the front of the building to the ceiling of the top story is thirty six feet. At this point, the building is also three stories in height.

25. The building facing Quincy Street is also less than forty feet in height. It is however four stories in height. Sub-section 3201.1 limits the height of buildings in the R-5-A District to three stories. A variance from the story limitation of Sub-section 3201.1 is thus required.

26. Advisory Neighborhood Commission 5-A, by letter dated June 20, 1979, opposed the application as originally heard. The ANC was opposed because the applicant intends to locate thirty units on the site where two single family houses were located. The ANC believed that the proposed level of development oversaturated an existing low density area. The ANC opposed the building of condominiums in the area. The ANC objected to the four story height as being out of character with the predominant existing three story height of the area. The ANC also noted that the buildings exceeded the height limit by one foot. The ANC did not file a report on the amended application.

27. There was other opposition to the application from residents and owners of property surrounding the subject site. In addition to the arguments cited by the ANC, other objections were raised to the fact that some of the houses would not face a street but would face the parking lot at the rear, and

would be similar to undesirable alley dwellings. The opposition also feared that granting of a variance would set a precedent for future applications. There was also opposition based on the adverse traffic impacts in and engendered by the alley which will be used for access to the development.

28. As to the issues raised by the ANC and the other parties in opposition, the Board finds as follows:

- a. The R-5-A District is intended to encourage a variety of building types in one zone district. The number of units proposed is well within the limits of the R-5-A District which would allow as many as forty-five to fifty apartment units.
- b. The DHCD and the OPD both recommended approval of the application, finding that the proposed development is generally consistent with the character of the area. In Finding of Fact No. 17, the Board noted the diverse land use and zoning pattern of the immediate vicinity. The proposed development is not overly dense and is not out of character.
- c. The objection to condominium ownership are unfounded. In a condominium, the purchaser of a unit owns the title to that unit. In that sense, the purchaser is a homeowner, like any other homeowner.
- d. As to the number of stories, the Board notes that there is an existing four story apartment building abutting the subject property on the south.
- e. In Findings of Fact No. 24 and 25, the Board determined the height of the buildings to be less than forty feet, in accordance with the Zoning Regulations.
- f. None of the units in the proposed development are on alley lots. Even though some units have their entrance on the side of the building away from the street, all of the units face on a street.
- g. The Board has consistently stated that each application must be judged on its own merits, on the basis of the record before the Board in each individual case.
- h. Access via the alley to Quincy Street has been recommended favorably by the D C Department of Transportation. The Board, in Finding of Fact No. 22, determined that there will be minimal adverse impacts from the proposed development.

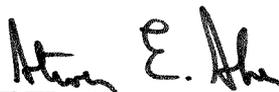
CONCLUSION OF LAW AND OPINION:

The Board concludes that the applicant has met all of the requirements of Paragraph 3105.42 and Sub-section 3307.2 of the Zoning Regulations to be granted a special exception under Sub-section 8207.2. The site plan provided was duly referred to the departments and agencies specified in Paragraph 3105.42 with no objection to the approval of the project except as has been met by the applicant. The plans provide new housing in the District of Columbia in a manner which will be compatible with the surrounding neighborhood. The density provided is below the density permitted in the R-5-A District. Ample open space, private recreation area, and landscaping are provided on the site. The groupings of the buildings have been laid out in a way to get maximum use of interior open space. The site plans meet the specific and individual criteria set forth in Paragraph 3105.42 and Section 3307.2. Additionally, the Board concludes that the project will be in harmony with the general intent and purposes of the Zoning Regulations and will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Maps.

The Board also concludes that the applicant's request for variance relief will not adversely affect the surrounding land uses. The requested variance is an area variance, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. The Board concludes that the slope of the site is a condition of the property which creates the need for the four story building. The Board notes that the front of the building, on the downhill side, is four stories, but the rear of the building, on the uphill side is only two and one-half stories. The Board concludes that the record reflects that the applicant would suffer a practical difficulty if the variance were denied. The Board concludes that the variance would not impose a substantial detriment to the public good and it would not substantially impair the intent, purpose and integrity of the Zoning Regulations. It is therefore ordered that the application as amended is granted, subject to the condition that the development be constructed in accordance with the plans submitted to the Board as Exhibit No. 66 of the record.

VOTE: 3-1 (William F. McIntosh, Charles R. Norris, and Walter B. Lewis to grant, Connie Fortune opposed, Leonard L. McCants abstaining).

BY ORDER OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 10 MAR 1980

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.