

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12982, of Stephen B. Naylor and Barbara A. Levi, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the prohibition against converting a non-residential structure for human habitation on an alley lot (Sub-section 7606.3) to convert a stable into a dwelling in a C-2-A District at the premises rear 636 Q Street, N.W. (Square 445, Lot 170).

HEARING DATE: July 18, 1979
DECISION DATES: August 8 and September 5, 1979

FINDINGS OF FACT:

1. At the public hearing, the Board determined that the property had been posted for only eight days, instead of the ten days normally required by Section 3.3 of the Supplemental Rules of Practice and Procedure. The Board further determined that in all other respects, notice had properly been given. Mrs. Barbara Levi, one of the applicant, testified that the letter concerning the posting had been addressed to Mr. Stephen Naylor, the other applicant, and that he was out of town. The Board voted 5-0 (Chloethiel Woodard Smith, William F. McIntosh, Walter B. Lewis, Charles R. Norris, and Leonard L. McCants) to waive the normal ten day posting requirement.

2. The subject property is located in a C-2-A District, in the square bounded by 7th, Marion, P and Q Streets, N.W. The site has no street frontage, but is located on a ten foot wide public alley which runs parallel to 7th Street and which connects to both Q and Marion Streets.

3. The subject property is developed with a two story brick structure with a flat roof which was originally constructed for use as a stable. The building is currently vacant, and the windows and doors have been sealed shut. The building occupies 100 per cent of the lot.

4. The applicant proposes to renovate the existing building and convert it to residential use. The building would contain a one-car garage, laundry and storage area on the first floor, and one bedroom, kitchen, bath and living area on the second floor.

5. Sub-section 7606.3 reads in part, "non-residential structures located on such alleys shall not be converted, altered, remodeled, restored or repaired for human habitation, regardless of cost." There is no evidence or testimony in the record to indicate that the building was ever used for residential purposes. The applicants therefore require a variance from the cited portion of Sub-section 7606.3.

6. As the building occupies the entire lot, there would be no yard or open space surrounding the building.

7. Use of the building as a residence creates safety problems for the applicants. The property is located to the east of a row of entirely commercial structures, many of which are vacant and unused. The only access to the site is by way of a narrow ten foot alley, which also provide the only light and ventilation to the property. The Board notes that the limited access to the site for fire engines is another concern.

8. The subject site is located between commercial and residential areas. The properties to the north and east are residential in use, with R-4 zoning located across the alley to the east. Commercial uses are located to the west and south.

9. The applicants presented no evidence or testimony to indicate that the property is exceptionally narrow or shallow or is affected by some exceptional topographical condition or other extraordinary or exceptional condition.

10. The applicant presented no evidence or testimony that the strict application of the Zoning Regulations would cause an undue hardship or practical difficulty upon them as the owners of the property.

11. The Office of Planning and Development, by report dated July 12, 1979 and by testimony presented at the hearing, recommended that the application be denied. The OPD reported that "there are no reasons by way of exceptional narrowness, shallowness, shape or topographic condition relating to this property to support the requested variance relief." The OPD further reported that "the site can be developed with a land use permitted in the C-2-A District." The OPD concluded that "to grant the requested variance relief sought would impair substantially the intent, purpose and integrity of the Zoning Regulations and Maps." The Board concurs in the findings and conclusions of the OPD.

12. There was no written report from Advisory Neighborhood Commission - 2C.

13. There were no persons present at the public hearing either in support of or in opposition to the application.

14. Subsequent to the Board's vote to deny the application and prior to the issuance of this Order, counsel for the applicant filed a motion to reopen the record and conduct a further hearing, pursuant to Section 5.3 of the Supplemental Rules of Practice and Procedure. At it's public meeting held on September 5, 1979, the Board discussed the motion. The Board determined that it had sufficient facts before it to decide the application, and that no further hearing was necessary. On a motion made by Charles R. Norris, seconded by William F. McIntosh, the Board denied the motion by a vote of 3-1 (Charles R. Norris, William F. McIntosh and Leonard L. McCants to DENY, Chloethiel Woodard Smith opposed, Walter B. Lewis not present, not voting).

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that this application is properly before the Board for a variance from Sub-section 7606.3. More specifically, the variance needed deals only with the prohibition against converting a non-residential structure for human habitation, regardless of cost because the building is an existing non-residential building. The Board has therefore not relied upon or considered any information related to the cost of the structure or the cost of converting and renovating the structure. The Board further concludes that Sub-section 7606.2 is not relevant to this application, since that section deals with erection or construction of a one-family dwelling. In this case, the building is already in existence.

The Board further concludes that the requested variance is a use variance, the granting of which requires the showing of an undue hardship upon the owner arising out of some exceptional or unique condition of the property. The case is not an area variance, since what is at issue is use of the premises for human habitation. Commercial uses would be permitted as a matter-of-right, with no approval necessary from the Board. The Board notes that the conclusion is consistent with similar conclusions in other recent alley lot variance cases (e. g., Application No. 12814 of J. Anthony Stout, Order dated July 23, 1979 and Application No. 12934 of Dayton Investments, Inc., Order dated August 7, 1979).

The Board concludes that the applicants have not proven a case for a use variance. The applicants have demonstrated nothing unusual about the site, nor have they presented any evidence or testimony that strict application of the Regulations would constitute a hardship upon the owner.

The Board further concludes that to permit residential use of the property would be contrary to the intent and purposes of the Zoning Regulations. The building has no open space of it's own around it, it is located in a commercial area and it would be an unsafe living environment. The Board concludes that the subject property is inherently unsuitable for residential use.

For all of the foregoing reasons, it is therefore ORDERED that the application be DENIED.

VOTE: 3-2 (William F. McIntosh, and Leonard L. McCants to DENY, Walter B. Lewis to DENY by PROXY, Chloethiel Woodard Smith and Charles R. Norris OPPOSED).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

5 NOV 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."