

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13103, of Eugene Kucera, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the minimum lot area requirements (Sub-section 3301.1) to use the first, second and third floors of the subject premises as an apartment house consisting of four units in an R-4 District at the premises 121 4th Street, N.E. (Square 815, Lot 800).

HEARING DATE: November 28, 1979
DECISION DATE: December 5, 1979

FINDINGS OF FACT:

1. The subject premises is located one block south of Stanton Square on the east side of 4th Street between Constitution Avenue to the north and A Street to the south and is known as 121 - 4th Street, N.E. It is in an R-4 District.
2. The subject site is approximately 1,819 square feet in area and is improved with a two story, basement and attic red brick row dwelling. There is an out-side front entrance to the basement level. There is a dilapidated garage structure in the rear yard.
3. A certificate of Occupancy No. A-18297, dated November 24, 1952 was issued for the use of the subject premises as a tenement house, first and second floors.
4. The subject site is generally rectangular in shape. There is a public alley to the rear of the property.
5. The applicant proposes to convert the subject property into an apartment house of four units. One unit would be on each of the first and third floors. Two units would be on the second floor. One room in the basement would be reserved for family guests and part of the first floor would serve as a recreational area. The applicant would occupy the third floor unit. The garage would be torn down and parking pads provided.
6. Under the Zoning Regulations, conversions to an apartment house containing three or more units require 900 square feet of lot area for each unit within the building. The subject lot consists of 1,819 square feet. The applicant is requesting a variance of 1,781 square feet.

7. The Office of Planning and Development, by report dated November 19, 1979, recommended that the application be denied. The OPD testified as follows:

"The subject lot is similar in size, shape and improvements to the majority of the other lots in Square 815. The OPD does not find any peculiar physical characteristics of the site relating to topography, narrowness or shallowness to indicate a practical difficulty upon the owner which would prohibit the occupancy of the premises in conformance with the regulations. Conformance in this case would include the premises use as a flat or rooming houses as a matter of right. The OPD is of the view that the proposed use would be an over development of the site as suggested by the substantial variance requested. In conclusion, the OPD is of the opinion that the requested variance if granted would cause substantial detriment to the public good and impair the intent, purpose and integrity of the Zoning Regulations and Map." The Board so finds.

8. The Capitol Hill Restoration Society testified that at its meeting of November 14, 1979 it voted unanimously to oppose the application on the grounds that the neighboring property owners agreed that the granting of the variance would have an adverse impact on the character of the neighborhood. The Society stated its view that the applicant has shown no hardship, exceptional need or any unique circumstances inherent in the property to support the variance and that the applicant's statement that the subject property is too large for two families is without foundation. The Board concurs.

9. Advisory Neighborhood Commission - 6B testified that by resolution dated November 11, 1979, it voted to oppose the application on three grounds:

1. The neighborhood consists mostly of single family houses and flats and the requested usage would only increase the density and parking problems of the area.
2. There is substantial neighborhood opposition to this application as witnessed by the petition signed by thirty-one neighbors in opposition.

3. The application does not meet the requirements of Paragraph 8207.11 of the Zoning Regulations of the District of Columbia. In the decision Capitol Hill Restoration v. D.C. Board of Zoning Adj.398 A.2d 13, the District of Columbia Court of Appeals decided that three conditions must be met. The property because of its size, shape, topographical conditions, or other extraordinary or exceptional situation or condition must be unique. If uniqueness of the property is shown then such circumstances must result in exceptional or undue hardship upon the owner. And, if the first two conditions are met then the variance may be granted if the public good would not be affected and the intent, purpose and integrity of the zone plan would not be impaired. The applicant does not meet the first, much less the second or third condition.

The Board concurs with the reasoning of the ANC.

10. There was a petition with thirty-one signatures of neighborhood residents in opposition to the application that was submitted to the record. There were several letters in opposition on file. There was no support from the neighborhood for the application.

CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing of a practical difficulty stemming from the property itself. The Board found that the site is generally rectangular in shape and that the subject lot and improvements are quite similar to other properties in the immediate neighborhood. The Board concludes that there is no exceptional or extraordinary condition of the property creating a practical difficulty for the owner. The Board notes that the variance sought is extensive. The Board further notes that the subject property can be used for the purposes for which it is zoned. Also, for the reasons cited in finding No. 7, 8 and 9, the Board further concludes that the variance cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is DENIED.

Application No. 13103

Page 4

VOTE: 4-0 (William F. McIntosh, Connie Fortune, Charles R. Norris and Leonard L. McCants to DENY; Walter B. Lewis not voting, not having heard the case).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 7 APR 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."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13103, of Eugene Kucera, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the minimum lot area requirements (Sub-section 3301.1) to use the first, second and third floors of the subject premises as an apartment house consisting of four units in an R-4 District at the premises 121 4th Street, N.E., (Square 815, Lot 800).

HEARING DATE: November 28, 1979

DECISION DATE: December 3, 1979

FINAL DATE OF ORDER: April 7, 1980

DISPOSITION: The Board DENIED the application by a Vote of 4-0 (William F. McIntosh, Connie Fortune, Charles R. Norris and Leonard L. McCants to DENY; Walter B. Lewis not voting, not having heard the case).

ORDER

The applicant, on April 28, 1980, filed a motion for Reconsideration of the Board's Order denying the application. The grounds for the motion are that the applicant contends that some of the Board's Findings of Fact are based on inaccurate information, such as the reports of the Office of Planning and Development Advisory Neighborhood and Capitol Hill Restoration Society. Upon consideration of the motion and the Order, the Board finds first that the motion for Reconsideration was untimely filed and secondly that the motion fails to state any substantive respects in which the final decision is claimed to be erroneous. The Board concludes that it has committed no error in deciding the application. It is therefore ORDERED that the Motion for Reconsideration is DENIED in both respects.

VOTE: 4-0 (Connie Fortune, William F. McIntosh, Charles R. Norris and Leonard L. McCants to DENY; Walter B. Lewis not voting, not having heard the case).

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

Application No. 13103
Page 2

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

2 JUN 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."