

6. The applicants seeks a use variance to use the subject premises as a flat, since a flat is not a permitted use in the R-2 zone district. A flat is a use first permitted as a matter of right in the R-4 zone district.

7. The structure was built in 1953, prior to the adoption of the present Zoning Regulations. At that time, the zoning was residential "40A", which allowed a flat as a matter-of-right. However, no certificate of occupancy was applied for or issued to authorize the proposed use.

8. The applicant testified that the premises was constructed as a flat, and no exterior alterations have been made to the site.

9. The applicant further testified that there are no common living areas shared by the two units, and to convert the premises to use as a single family dwelling would require major construction work at a considerable cost.

10. The previous owner of the property lived in one unit, and rented the other unit. He lived in and owned the premises at that time of adoption of the Zoning Regulations, but had not applied for a certificate of occupancy to make it a legal use of a flat.

11. There is on-street parking at the site to accommodate cars owned by occupants of the units.

12. The Office of Planning and Development, by report dated December 6, 1979 and testimony given at time of public hearing, recommended approval of the application on the grounds that given the physical description of the premises, its zoning history, the unobtrusive and well kept exterior appearance of the premises and its zoning at the time of adoption of the Zoning Regulations, a substantial hardship would beset the applicant if the requested variance relief is not granted. The Board so finds.

13. Advisory Neighborhood Commission - 8D by report dated December 11, 1979, and testimony given at time of public hearing, recommended approval given the layout and zone history of the site

14. There was no opposition to the granting of this application.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings and facts and the evidence of record, the Board is of the opinion 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 at the time of adoption of the Zoning Regulations. The Board concludes that the physical layout of the property, its zoning history and its unobtrusiveness creates such a hardship. The Board notes that if a certificate of occupancy had been applied for after construction of the unit, the use would be a legal non-conforming use and could be continued.

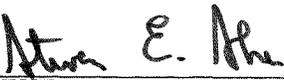
The Board concludes that the use of a flat at the premises is not likely to have an adverse impact on surrounding properties. The proposed use can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Accordingly, it is hereby ORDERED that this application is GRANTED.

VOTE: 5-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune, Charles R. Norris and Leonard L. McCants to GRANT).

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

ATTESTED BY:

  
\_\_\_\_\_  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: \_\_\_\_\_

17 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.