

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13200 of Piney Glen Co., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the lot area and lot width requirements (Sub-section 3201.1) to construct a single family detached dwelling in an R-1-B District at the premises 4133 Yuma Street, N.W., (Square 1729, Lot 2).

HEARING DATES: April 16, 1980 and June 11, 1980  
DECISION DATE: July 2, 1980

FINDINGS OF FACT:

1. The application was scheduled for the Public Hearing of April 16, 1980. At the Public Hearing the applicant requested a continuance of the hearing on the grounds that it was seeking counsel to represent it and also to afford the applicant an opportunity to meet with the opposition and discuss the opposition's concerns. The opposition agreed to the continuance. The Chair granted the applicant's motion to continue the application to the Public Hearing of June 11, 1980.

2. The subject property is located on the north side of Yuma Street, between Nebraska and Wisconsin Avenues to the east and 42nd Street to the west and is known as premises 4133 Yuma Street, N.W. It is in an R-1-B District.

3. The lot is rectangular in shape and relatively level in topography. The lot is grass covered and landscaped with several evergreen trees. There is an asphalt paved driveway and a frame one-car garage on the northeast corner of the lot. The subject lot is forty-five feet wide and 107 feet deep.

4. To the north of the subject site is the rear yard of a single family dwelling which fronts on 42nd Street, followed by the Janney Elementary School grounds in the R-1-B District. To the east is a single family dwelling of stucco construction, followed by the Oak Crest two story brick convent building in the R-1-B District. To the south across Yuma Street, a two-way traffic street, are the tennis courts of the Immaculata Seminary in the R-1-B District and to the west are two lots which are both developed with detached dwellings.

5. The applicant proposes to construct a single family detached dwelling on the subject site.

6. The current Zoning Regulations effective May 12, 1958, require that lots in the R-1-B District have a minimum lot area of 5,000 square feet and a minimum lot width of 50 feet. The subject lot has a lot area of 4,815 square feet and a lot width of 45 feet. A lot area variance of 185 square feet or four percent and a lot width variance of five feet or ten percent is requested by the applicant.

7. The applicant's proposed site plan, which includes the construction of a two-story brick single-family detached dwelling, is in compliance with the lot occupancy, parking, rear yard and side yard requirements of the Zoning Regulations.

8. Prior to 1930, the subject lot 2 and lot 3, which is immediately west of the subject property, were a single record lot. The owner had constructed a single-family detached dwelling on what is now lot 3 and lot 2 was left vacant. In 1930 the single record lot was subdivided. It was sold around 1950. The purchaser built the presently existing garage on lot 2. On April 29, 1977 the two lots were again sold as one unit. Lot 3 was subsequently sold and on October 2, 1977 the applicant purchased the subject lot 2.

9. Of the four lots which front on Yuma Street and which are used as single family dwellings only lot 1 has a lot area greater than the subject lot. Lots 3 and 4 have the identical lot area and lot width as the subject lot 2.

10. The subject lot is subject to a restrictive covenant limiting its use to residential purposes only.

11. The Office of Planning and Development, by report dated July 28, 1980, recommended that the application be approved. In its report the OPD stated that the proposed dwellings' architectural style was, in OPD's opinion, harmonious with the existing development adjacent to the site. The OPD was of the view that the area variances requested are minimal and that the proposed improvements to the site will not adversely effect the operation of neighboring properties. The substandard lot size resulted from the lot's subdivision prior to the adoption of the 1958 Zoning Regulations, and creates a practical difficulty in developing the site in compliance with the Regulations. The Board so finds.

12. Advisory Neighborhood Commission 3E made no recommendation on the application. The Commissioner of single member district, ANC-3E03, by letter of April 15, 1980, made a recommendation. The Board is required by statute to give "great weight" to the issues and concerns of the ANC where the resolution is in writing and the resolution is that of the ANC and not a single member district.

13. There were letters, of record, in opposition to the application and a petition of some fourteen signatures in opposition. There were equally as many letters, of record, in favor of the application.

14. There was opposition to the application at the Public Hearing. The grounds of the opposition were the same as stated in the letters of record. The basic grounds of opposition were as follows:

- a. The proposed house would be inconsistent with the immediately surrounding homes and lots. These homes are older, relatively large, and are located on substantial lots in a settled community. The existing houses are on lots, or double lots, that are significantly larger than the minimum zoning requirements. The proposed new house, in order to fit into the available space, would contrast sharply with the community.
- b. If the proposed house is built, it would appear "squeezed in" by comparison. Therefore, although the specific "numerical" variances requested for the proposed house may not be substantial, the proposed house would nevertheless present a seriously disruptive appearance in the immediately surrounding area.
- c. The proposed smaller house and lot would lower surrounding property values. The existing homes will appear crowded together and will lose the sense of privacy that is a characteristic of the neighborhood.
- d. Since the proposed house would abut the property at 4411 42nd Street, it would directly disturb the owners current view from and enjoyment of his home and land. The construction of the house would require up-rooting the large, attractive evergreen trees which the owners now see from the rear of their home.
- e. The disruption to the immediate living environment of the owners at 4411 42nd Street, would be both temporary and permanent. There would be the aggravating, though temporary disruption caused by construction. But more importantly, the environment will be permanently altered for the worse. The open space and greenery that are part of the natural setting of the area would be lost forever.
- f. The applicant must prove that the enforcement of the regulations as they currently exist "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship . . ." Paragraph 8207.11. The applicant cannot meet this burden. The applicant

Piney Glen Company, apparently wants to build a house for resale. It would not be a peculiar, exceptional or undue hardship to deny the application because Piney Glen Company may simply build such a house where the zoning laws clearly permit, and where a new house of the proposed size on the proposed lot would not so disrupt the surrounding area.

- g. If the application is approved, it will "substantially impair ... the intent, purpose, and integrity of the zone plan" in the community, contrary to the dictates of Paragraph 8207.11. The opposition believed that they have a right to rely on the community being preserved as it is. In fact, the aforesaid abutting property owners bought their houses approximately one year ago in specific reliance on the pleasant natural setting and older homes, on large lots, that were nearby. Their expectations and hopes are now placed directly in jeopardy by this application. The application should be denied to preserve the integrity of the community, which the opposition are confident the Zoning laws are intended to achieve.

15. The Board in addressing the concerns of the opposition finds that the proposed dwelling would not be inconsistent with the immediately surrounding homes and lots and also would not create a disruptive appearance as set forth in Finding of Fact No. 9. The fact that there are some dwellings on double lots creating large open space is not material. Such construction is an owner's choice and not a requirement of the Zoning Regulations for an R-1-B District. The Board also finds that the surrounding properties have no scenic easement that runs with their land. This is a chance that all property owners take when they purchase property surrounded by undeveloped land. The suggestion that the proposed development would lower surrounding property values is hypothetical and conjectural. Again, a disruption caused by construction is a fact of life. It is temporary. Without it there would be no progress or nothing would be built. The Board also finds for reasons discussed below that the applicant has met the burden of proof.

#### CONCLUSIONS OF LAW:

Based on the record the Board concludes that the applicant is seeking area variances the granting of which requires proof of a practical difficulty inherent in the property itself. The Board concludes that the area and width of the subject lot at the time of the adoption of the current Zoning Regulations creates such a difficulty in that the lot cannot be used for any permitted use without a variance from the Board. The Board notes that the subject lot was a record lot at the time of the adoption of the Zoning Regulations and not created through subdivision by the applicant. Further the subject lot is comparable in size to surrounding lots.

The Board further concludes that the relief can 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 GRANTED.

VOTE: 5-0 (Ruby B. McZier, Charles R. Norris, Connie Fortune, William F. McIntosh and Leonard L. McCants to grant)

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

ATTESTED BY:

  
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STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 31 OCT 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.