

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13240, of Georgetown-Jefferson Associates, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the floor area ratio requirements (Sub-section 4404.3) for a proposed revision to prior approved plans for an office building with an accessory parking garage in a W-3 District at the premises 1050 Thomas Jefferson Street, N.W., (Square 1190, Lot 76).

HEARING DATE: May 14, 1980  
DECISION DATE: June 4, 1980

FINDINGS OF FACT:

1. The subject property is located in a W-3 District on the west side of Thomas Jefferson Street between K Street and the C and O Canal. A portion of the property extends through to 31st Street.
2. The applicant presently has under construction on the subject property an office building with an accessory parking garage and an apartment building. The office and apartment buildings are connected underground. Under the definition of building, as set forth in Section 1202 of the regulations, the apartments and offices are two separate buildings.
3. The initial set of building plans proposed by the applicant were for the construction of the office building and parking. Those plans were approved on May 31, 1979, permits were issued and construction begun.
4. Subsequent to the May 31, 1979 approval, the applicant filed a second set of building plans for the construction of the proposed residential building. Those plans were disapproved, on the basis that the building did not meet the lot occupancy requirements of Sub-section 4406.1. That Sub-section, which is applicable to residential uses in the Waterfront District, requires that the lot occupancy be calculated for the entire area of the lot, including both the residential commercial portions. Using this method, the subject buildings, when combined, exceeded the seventy-five per cent lot occupancy.
5. The applicant therefore determined to proceed under the provisions of Section 7615 which allows the record lot to be divided into a number of theoretical lots. The Zoning Regulations are thus applied separately to each individual theoretical lot.

6. The theoretical lot upon which the apartment building is being constructed meets all of the requirements of the Waterfront District. The plans for the apartment building were then approved on November 8, 1979, and that building is also under construction.

7. When computations were made concerning the office building on its theoretical lot, it was determined that the building exceeded the floor area ratio for the theoretical lot on which it is located. The applicant therefore filed amended plans to reduce the commercial FAR for the theoretical lot. A revised building permit was issued on October 12, 1979.

8. In the course of constructing the office building, the applicant determined that it did not need all of the mechanical equipment areas shown on the revised plans. Accordingly, the applicant proposes to reduce the area devoted to mechanical equipment on floors two through six of the building. The applicant further proposes to eliminate planters at the rear of the building so as to allow occupants of the partially below-grade floor to walk out into an open court yard. If the planter is provided, as shown on the plans, the space would be considered a cellar and would not be chargeable against the gross floor area of the building.

9. The property is located on the Goergetown Waterfront, in the area subject to the jurisdiction of the Commission of Fine Arts. That Commission approved the plans of the building in such a way as to require the building to be below the maximum height of ninety feet permitted by the W-3 District and below the maximum FAR permitted by the W-3 District.

10. If the total lot were considered, the overall floor area ratio for the office building would be 4.07. However, since the site has been divided, at the option of the applicant, into two theoretical lots, the floor area ratio for the office building on its theoretical lot is 5.13, or 4,539.53 square feet over the maximum permitted.

11. The exterior design of the building as visible from the street will not change. The only exterior changes which will occur if the application is approved would be the reduction in grade at a portion of the rear of the building.

12. The applicant argued that the property is affected by an extraordinary or exceptional condition because of several features. The applicant argued that the irregular shape of the lot, including frontage on two streets is an exceptional condition. The applicant further argued that the imposition of a height limit by the Commission of Fine Arts when it reviewed the building prevented the applicant from building a building with the residential uses located over the commercial uses. Therefore, the applicant's options in developing the site were constrained beyond what would have been the case if there had been no Fine Arts review. The applicant argued that the design constraint approved by Fine Arts and the shape of the property led to the need for two theoretical lots, which also is an exceptional condition.

13. The applicant further argued that it would suffer a practical difficulty by virtue of the loss in rent from approximately 3,000 square feet of useable office space.

14. The exceptional conditions of the property alleged by the applicant are not the source of the need for the variance. As set forth in Finding of Fact Nos. 3 through 7, the applicant applied for and received building permits to construct both the residential building and the office building as a matter-of-right. The conditions alleged by the applicant thus did not prevent the applicant from proceeding with construction under the Zoning Regulations. It was only subsequent to the receipt of the permit and commencement of construction that the applicant determined that it did not need all of the mechanical equipment space that it had designed and programed into the building. The request for the variance thus stems from incorrect design assumptions made by the applicant and are not inherent in the property.

15. The applicant has not satisfactorily demonstrated to the Board that it will suffer a practical difficulty if the application is not granted and the Zoning Regulations are strictly applied. The applicant will not "lose" 3,000 square feet of floor area if the regulations are strictly applied. The applicant will be denied the opportunity to gain 3,000 square feet of floor area more than the regulations permit.

16. The applicant did not demonstrate that there were no other ways to develop the property which would have achieved a greater density or a greater financial return to the applicant. The applicant's representative advised the Board that the property could have been developed as a total commercial building.

17. Advisory Neighborhood Commission - 3A, by letter dated May 13, 1980, opposed the application. The ANC was opposed, as a matter of policy, to increases in the permitted floor area ratio, on the grounds that such variances over-intensified the area and created further congestion. The ANC considered the application to be an attempt to circumvent the intent of the regulations.

18. The Citizens Association of Georgetown, by testimony at the hearing, opposed the application on the grounds that the applicant had not established any exceptional or unique condition of the subject property.

19. As to the issues raised in opposition by the ANC and the Citizens Association, the Board concurs with the position that there is no condition of the property which occasions the need for the variance. The Board finds that the design of the building is not significantly changed by this application. The Board further finds that the increase in density is relatively small, and will not significantly increase traffic or congestion in the area. However, the Board does agree that approval of the application would be contrary to the intent of the Zoning Regulations, and as set forth below, the application should be DENIED

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that 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 conditions which create the need for the variance do not arise out of the property, but from the specific building design and direct conscious decision made by the applicant. The buildings at issue in the application have been approved for construction as a matter-of-right. The applicant has proceeded to construct the buildings. The change requested are a result of design decisions made by the applicant's architect.

The Board further concludes that the applicant has not proven the case in regard to the practical difficulty it will have. The fact that additional income can be generated from additional gross floor area which the applicant is not now entitled to is not a proper basis for the granting of a variance. The applicant could have arrived at a completely different building design if it had sought a greater economic return, including solutions which do not require variances.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. The Board concludes that the requested relief cannot 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 maps. It is therefore ORDERED that the application is DENIED.

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

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

ATTESTED BY:   
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 10 NOV 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."