

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application of No. 13205 of James Properties General Partnership, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Sub-section 3307.2 to allow a group of six row dwellings with the division walls from the ground up to be deemed a single building and for a variance from the prohibition against allowing construction of a group of row dwellings on an alley lot where such alley does not have a thirty foot access leading to a street (Sub-section 7606.2) in an R-4 District at the premises rear 412-422 - 4th Street, N.E., (Square 780, Lot 62).

HEARING DATE: April 16, 1980

DECISION DATE: May 7, 1980

FINDINGS OF FACT:

1. The subject ~~square~~ **780** is bounded on the north by E Street, on the south by D, on the east by 4th Street and on the west by 3rd Street, N. E.

2. The subject lot 62 is one of four lots in the interior of the square. Each of the four lots is bounded on all sides by public alleys. The subject premises is known as rear 412-422 4th Street, N. E. It is in an R-4 District.

3. There is a fifteen foot public alley to the north of the subject premises, a ten foot public alley to the east, a thirty foot public alley to the west and a twenty-five foot public alley to the south. To the east and south of the subject property across from the alleys are the rear yards of row houses which face on 4th and D Streets, N. E. To the north and west of the subject site, across from the alleys, are large vacant structures which appear to have been warehouses.

4. The subject site is now a parking lot for seventeen vehicles under the Board's approval in BZA Order No. 12061 dated April 4, 1976. The permit will expire on April 4, 1981. Another of the four interior alley lots is also a parking lot.

5. The applicant proposes to construct six row dwellings on the site. The subject site is rectangular in shape and is 4,553.64 square feet in area.

6. Each proposed dwelling will be two stories in height, will contain two bedrooms and will have a parking space in the rear. Each unit will be approximately 11.5 feet wide, thirty-five feet deep and 800 square feet in area. The units are proposed to sell in the \$80,000 bracket as condominiums.

7. The units are sited with their fronts facing the thirty foot public alley to the west. Access to 3rd or 4th Streets would be through a fifteen foot public alley to the north of the site or to 3rd Street through a twenty-five foot public alley to the south which decreases in width to ten feet before reaching 3rd Street. The thirty foot alley on which the units face provides no direct exit to a street. It leads into the fifteen foot alley to the north or the twenty-foot alley to the south as above mentioned.

8. Entrance to the parking space in the rear of each unit would be from 4th Street through a fifteen foot alley and then through a ten foot alley to the east of the site.

9. The applicant testified that no rear or service entrance abuts a street, front yard or front court and that no exterior stairway is constructed above the level of the joists of the main floor.

10. The Capitol Hill Restoration Society, the Stanton Park Neighborhood Association and two individual owners of property in the immediate area of the subject site opposed the application on the grounds that the proposed dwellings are too small and not in harmony with the requirements of an R-4 District, that the construction of six row dwellings constitutes too great a density for the site, that the granting of the application could set a precedent for the development of the other three interior lots leading to an overcrowding of the alley space and that six units could create a parking impact on the immediate streets where, even though there is residential parking, on street parking is still a problem. The Board so finds except as to the precedent issue. As to the precedent issue the Board will determine each application on its own merits.

11. ANC-6A recommended that the application be approved. The ANC-6A testified that the present use of the site as a parking lot creates a community eyesore. The alley is strewn with garbage, empty beer cans and whiskey bottles. It attracts rodents, and stray cats and dogs, derelicts and racing car fans. The ANC testified that the subject proposal would replace a parking lot with needed residential units, each with its own parking space so that congestion in the area will be reduced. The ANC reported that the site's close proximity to Capitol Hill offices and Metro at Union Station affords the residents of these dwelling accessible public transportation. The design of the units are compatible with neighborhood character and development. The ANC argued that the area needs housing in the price range of these units. The ANC stated that the construction of housing units on this site will have no adverse impact on the neighborhood character and development, but will be a benefit and an improvement over parking lots or warehouses which are other uses permitted on alley lots with BZA approval.

12. The Board is required by statute to give "great weight" to the issues and concerns of the ANC. While the Board may agree with the ANC that the parking lot may be an eyesore and that it may attract all kinds of undesirable animals and people, the cure for such a state is not be replacing the use with another use that is contrary to the purpose, intent and integrity of the zone plan. There are departments within the D. C. Government which have the facilities to insure that the subject parking lot does not disintegrate into a community eyesore. The Board finds that the overriding issue created by the proposed six row dwellings is the density, more particularly so as in the subject application where the site is an interior lot surrounded by public alleys with no thirty foot access to a public street. The Board finds that, contrary to what the ANC states, the granting of the application would have an adverse impact on the neighborhood. The Board also notes that the applicant would not be limited in the use of his property to parking lots and warehouses.

13. On April 23, 1980 prior to the Board's determination of the application, applicant submitted a revised site plan reflecting a reduction in the number of units from six to five. In response, one of the abutting property owners stated that she would no longer oppose the application. None of the other parties changed their position. The reduction of one unit from six to five does not materially change the facts already stated herein as to density.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the applicant is seeking a special exception and variances. As to the special exception the Board concludes that based on Findings No. 6, 8 and 10 the proposed construction will affect adversely the present character or future development of the neighborhood and thus does not meet the requirement of Paragraph 3307.23 of the Zoning Regulations. The Board further concludes that the density issue arising from the proposed development is not in harmony with the purpose and general intent of the Zoning Regulations.

As to the variance the Board concludes that this is a use variance which requires a showing of an undue hardship upon the owner of the property arising out of some unique or exceptional condition of the property. The Board concludes that the hardship is not inherent in the property. The applicant is not deprived of the use of the property. There are other uses to which the subject property could be put without causing substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as the proposed construction would.

The Board concludes that it has given the "great weight" to the concerns of the ANC. Accordingly, it is ORDERED that the application, as amended, is DENIED.

VOTE: 4-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune, 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
Steven E. Sher,
Executive Director

FINAL DATE OF ORDER: 28 JUL 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."